

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF TENNESSEE

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4 ROCKY WATERS MOUNTAIN INN, LLC,  
5 Plaintiff,  
6 v. Docket No. 3:19-CV-6  
7 THE TRAVELERS INDEMNITY  
8 COMPANY OF AMERICA,  
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10 Defendant.  
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VIDEOTAPE DEPOSITION  
OF  
THOMAS J. IRMITER  
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Taken February 28, 2020 By Christine M. Clark, RPR

**Videotape Deposition of Thomas J. Irmiter - 2/28/2020**  
**Rocky Waters Mountain Inn, LLC v. The Travelers Indemnity Company of America**

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 MCWHERTOR SCOTT &amp; BOBBITT PLC</p> <p>4 54 Exeter Road</p> <p>5 Suite D</p> <p>6 Jackson, Tennessee 38305</p> <p>7 Phone: 731.664.1340</p> <p>8 Email: cscott@gilbertfirm.com</p> <p>9</p> <p>10 By: Clinton H. Scott</p> <p>11 (Appearing telephonically)</p> <p>12 For the Plaintiff</p> <p>13</p> <p>14 FORAN GLENNON PALANDECH PONZI &amp; RUDOLPH PC</p> <p>15 222 North LaSalle Street</p> <p>16 Suite 1400</p> <p>17 Chicago, Illinois 60601</p> <p>18 Phone: 312.863.5000</p> <p>19 Email: bdevilling@fgppr.com</p> <p>20</p> <p>21 By: Brian E. Develling</p> <p>22 For the Defendant</p> <p>23</p> <p>24 ALSO PRESENT:</p> <p>25 Stephen Smith, Legal Videographer</p>	<p style="text-align: right;">Page 4</p> <p>1 THE VIDEOTAPE DEPOSITION of THOMAS J. IRMITER is taken</p> <p>2 on this 28th day of February 2020, at Benchmark</p> <p>3 Reporting Agency, 450 South Ninth Street, Suite 450,</p> <p>4 Minneapolis, Minnesota, commencing at 8:57 a.m.</p> <p>5 THE VIDEOGRAPHER: Good morning. We are on</p> <p>6 the record. Today's date is February 28, 2020, and the</p> <p>7 time is 8:57 a.m. This is the videotape deposition of</p> <p>8 Tom Irmiter, in the matter of Rocky Waters Motor Inn</p> <p>9 versus The Travelers Indemnity Company of America, Case</p> <p>10 Number 3:19-CV-6, filed in the United States District</p> <p>11 Court, Eastern District of Tennessee.</p> <p>12 The court reporter's name is Christine Clark. My</p> <p>13 name is Stephen Smith, the legal videographer. We are</p> <p>14 with Benchmark Reporting Agency.</p> <p>15 Would the attorneys please introduce themselves?</p> <p>16 MR. DEVILLING: Brian Devilling, for</p> <p>17 Travelers.</p> <p>18 MR. SCOTT: Clint Scott, for the plaintiff.</p> <p>19 THE VIDEOGRAPHER: Thank you very much. The</p> <p>20 court reporter will now swear in the witness and then</p> <p>21 we can proceed.</p> <p>22 THOMAS J. IRMITER,</p> <p>23 a witness in the above-entitled action,</p> <p>24 after having been first duly sworn,</p> <p>25 deposes and testifies as follows:</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2</p> <p>3 Examination by Mr. Devilling, Page 5</p> <p>4</p> <p>5 INDEX OF EXHIBITS</p> <p>6</p> <p>7 NUMBER DESCRIPTION</p> <p>8 1 Mr. Irmiter's CV, Page 9</p> <p>9 2 January 22, 2018, Report to Howarth Group, from</p> <p>10 FBS of Rocky Waters Motor Inn, Page 44</p> <p>11</p> <p>12 3 January 22, 2018, Report to Howarth Group,</p> <p>13 from FBS of Days Inn, Page 44</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 EXAMINATION</p> <p>2 BY MR. DEVILLING:</p> <p>3 Q. Okay. Mr. Irmiter, my name is Brian Devilling. I</p> <p>4 represent Travelers in the Rocky Waters Motor Inn versus</p> <p>5 Travelers Indemnity Company case. I understand you've</p> <p>6 given a few depositions before, but I'll go over just</p> <p>7 the ground rules very briefly.</p> <p>8 If you don't understand a question that I ask,</p> <p>9 please let me know. Okay?</p> <p>10 A. All right.</p> <p>11 Q. If you need a break, just let me know. We can take a</p> <p>12 break any time. Okay?</p> <p>13 A. Sounds good.</p> <p>14 Q. If you could wait until I'm finished asking my question</p> <p>15 before you give your answer. Okay?</p> <p>16 A. Sounds good.</p> <p>17 Q. And if you could answer with yes or no, as opposed to</p> <p>18 uh-huh or uh-uh, it makes it easier for the court</p> <p>19 reporter. Okay?</p> <p>20 A. I'll do my best.</p> <p>21 Q. All right. You are currently employed by Forensic</p> <p>22 Building Science, Incorporated, correct?</p> <p>23 A. Yes, I am.</p> <p>24 Q. And what is your position with -- if I call that FBS for</p> <p>25 shorthand, is that fair?</p>

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1 **A. Yeah. It will take about an hour off the depo if you**  
2 **do.**  
3 Q. Sounds good. So what is --  
4 **A. Yes.**  
5 Q. What's your position with FBS?  
6 **A. Well, my corporate position is CEO. My day-to-day**  
7 **activities include essentially running the business,**  
8 **doing field inspections, writing the reports, writing**  
9 **estimates and occasionally sitting in on depositions**  
10 **like this today and/or court trials.**  
11 Q. Okay. What's your highest level of education?  
12 **A. I have an undergraduate degree from the University of**  
13 **Hamline, in St. Paul.**  
14 Q. Is that in English, I understand?  
15 **A. It is, yes.**  
16 Q. Any specific emphasis?  
17 **A. No.**  
18 Q. Okay. For example, sometimes there might be an emphasis  
19 on language or literature or creative writing. Anything  
20 like that?  
21 **A. I'm sorry. Yes. Creative writing and English Lit.**  
22 Q. Okay. Any degree beyond that?  
23 **A. No.**  
24 Q. Okay. Any -- so no degrees in any scientific field?  
25 **A. No. I have classes that I've taken, but no degrees.**

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1 Q. Okay. In your college courses, did you take any classes  
2 in engineering?  
3 **A. No.**  
4 Q. In your college --  
5 **A. Well, not in my undergraduate. I have taken a class at**  
6 **the University of Wisconsin School of Engineering in the**  
7 **Master's program. I was enrolling to get my master's**  
8 **degree about four years ago. Finished that first class**  
9 **and then abandoned that program. It was just too -- too**  
10 **intensive for the career that I had at the time.**  
11 Q. What was that class that you took?  
12 **A. It was a senior level project management class in**  
13 **engineering at the time.**  
14 Q. In your college courses, did you ever take anything in  
15 architecture?  
16 **A. Not from the University of Hamline. I have had two**  
17 **classes from a community college in -- one in**  
18 **architectural design and drafting, where we had to**  
19 **design an entire building essentially. So six -- six**  
20 **week -- six-month class, I believe; and then one in**  
21 **estimating.**  
22 Q. Okay.  
23 **A. Yeah.**  
24 Q. Have you ever taken any chemistry class?  
25 **A. In college, yeah.**

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1 Q. Okay. And what was that class?  
2 **A. I can't -- it's 40 - 45 years ago.**  
3 Q. Was it just like an introductory --  
4 **A. I can't remember.**  
5 Q. Would it have been like an introductory type of  
6 chemistry class?  
7 **A. Sure.**  
8 Q. Ever taken a class in biology?  
9 **A. Yes.**  
10 Q. Was it also kind of an introductory type of biology  
11 class in college?  
12 **A. Yes.**  
13 Q. Anything beyond that?  
14 **A. Well, I know I took advanced chemistry and advanced**  
15 **biology and advanced physics in -- in high school. I**  
16 **went to a preparatory school, and this was back before**  
17 **they had advanced placement classes, but they were**  
18 **college level classes that I took in high school.**  
19 Q. Any -- any classes in ecology, geology, thermodynamics?  
20 **A. No.**  
21 Q. Okay. Do you have any medical training?  
22 **A. No.**  
23 Q. Are you a certified industrial hygienist?  
24 **A. No.**  
25 Q. Okay.

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1 **A. I have to back up. Medical training, I actually am a**  
2 **certified athletic trainer. So --**  
3 Q. Oh, okay.  
4 **A. -- there's some medical training in that.**  
5 Q. Other than that, any medical training?  
6 **A. No. I can wrap your ankle if you sprained it.**  
7 Q. Hopefully, that doesn't happen today.  
8 **A. Yeah.**  
9 Q. Any training in toxicology?  
10 **A. No.**  
11 Q. Epidemiology?  
12 **A. No.**  
13 MR. DEVILLING: And I'm going to hand you  
14 what we'll mark as Exhibit 1.  
15 (Exhibit 1 is marked for identification.)  
16 MR. SCOTT: Mr. Devilling, can you tell me  
17 when you mark something what it is?  
18 MR. DEVILLING: Yeah. I was just waiting  
19 for her to mark it. It's a CV.  
20 MR. SCOTT: Thank you.  
21 Q. (MR. DEVILLING) Mr. Irmiter, is this a true and  
22 accurate copy of your current CV?  
23 **A. Yes.**  
24 Q. Okay. I'm going to start from the top. 2168 Juliet  
25 Avenue, is that a business address?

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1 **A. Yes, it is. It's the -- it's the physical address. Two**  
2 **years -- three years ago we sold all of our brick and**  
3 **mortar around the country and everyone went virtual. So**  
4 **my office is actually up in the clouds now.**  
5 Q. Okay. It lists your licenses and certifications under  
6 that, right?  
7 **A. Yes.**  
8 Q. State of Minnesota Building Official is the first one  
9 listed, correct?  
10 **A. Yes.**  
11 Q. And you've held a State of Minnesota Building Official's  
12 license since 2006, correct?  
13 **A. Yes.**  
14 Q. What is having a Minnesota Building Official's license  
15 empower you to do?  
16 **A. Well, Minnesota's the only state that licenses building**  
17 **code officials or offers training, licensing and**  
18 **continuing education for building code officials. All**  
19 **states are governed by the International Code Council**  
20 **family of codes, including, you know, Tennessee, for**  
21 **example. So in -- in Minnesota, I -- or actually any**  
22 **state, I could -- if wanted to, I could apply for a**  
23 **building code -- a position in the building code office**  
24 **either as an inspector or as the building code official**  
25 **that runs the office, depending on what -- what their**

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1 **needs were.**  
2 Q. Have you ever held a position with a municipality or  
3 with a state as a building code official?  
4 **A. No.**  
5 Q. Does the Minnesota Building Official license empower you  
6 to do anything beyond, you know, working as a code  
7 official for the state or for a municipal government?  
8 **A. Well, it certainly has qualified me in a number of**  
9 **jurisdictions in court cases as a -- one of the**  
10 **qualifications is as a person who renders -- who can**  
11 **render an opinion on code. I can't enforce the code in**  
12 **Gatlinburg for example.**  
13 Q. Right.  
14 **A. I can tell you what the code is. I can give you my**  
15 **interpretation of when it would be triggered, what are**  
16 **the triggering events, what would then need to be done,**  
17 **but I can't enforce that. That would have to be the**  
18 **local building code official.**  
19 Q. Are you aware of any building code issues in this case?  
20 **A. Off the top of my head, I don't think so.**  
21 Q. Okay.  
22 **A. I just, I -- I can't recall.**  
23 Q. There's four more licenses/certifications listed under  
24 there with the International Code Council. Are those  
25 also building code related licenses and certifications?

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1 **A. Yes.**  
2 Q. Okay. And then it says Insurance Appraisal and Umpire,  
3 correct?  
4 **A. Yes.**  
5 Q. And then certified Renovator - Lead Safety. What is  
6 that?  
7 **A. Lead Safety.**  
8 Q. I'm sorry. Lead Safety.  
9 **A. Yeah. So it's a lead and asbestos certification.**  
10 Q. Right.  
11 **A. So, for example, if Rocky Waters were to be tested and**  
12 **they had lead or asbestos, I could write an abatement**  
13 **program for that, qualified to do that. I could also**  
14 **monitor the abatement process, and I could also do**  
15 **clearance testing for that.**  
16 Q. Okay. As far as we know today, there's no lead or  
17 asbestos issues in the Rocky Waters' case, correct?  
18 **A. As far as we know.**  
19 Q. And then a vinyl siding installer, that's not applicable  
20 in this case, correct?  
21 **A. Correct.**  
22 Q. And then it says Metro Skywarn Spotter. That's not  
23 applicable in this case, correct?  
24 **A. The only way -- the only reason it would be applicable**  
25 **here would be to look at the wind direction, and where**

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1 **the plume of smoke was. That's pretty well documented**  
2 **by others, and -- but, yes, that would be the only thing**  
3 **that would apply here.**  
4 Q. Okay. Excuse me. Any other licenses or certifications  
5 that you hold that are not listed on your CV?  
6 **A. In the -- well, they're not -- in this section of the CV**  
7 **there is a -- I don't know if we should move this or**  
8 **not. But I am approved to teach continuing education**  
9 **for insurance adjusters -- it's on page 12 -- in one,**  
10 **two, three, four, five, six, seven, eight states. And I**  
11 **believe that is now -- that should be updated because I**  
12 **know Texas is now approved on there as well. So...**  
13 Q. Okay.  
14 **A. Yeah.**  
15 Q. Any other licenses or certifications?  
16 **A. No.**  
17 Q. Have you ever -- ever held any other licenses that are  
18 not listed on your CV?  
19 **A. Yes.**  
20 Q. And what is that?  
21 **A. I held a license as a contractor in the State of**  
22 **Minnesota for 17 years.**  
23 Q. Okay. When did you -- what years did you hold a license  
24 as a contractor?  
25 **A. Well, when it first became available for licensing. I**

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1 think it was maybe 1988, somewhere in that range. I  
2 can't remember. Until 2000.  
3 Q. Was your contractor's license, was that in your name, or  
4 was it in the name of a company?  
5 **A. Both. You have what's called a qualifying person. I**  
6 **was the qualifying person. So the company, any -- any**  
7 **company that practices residential construction in the**  
8 **State of Minnesota is required to be licensed as a**  
9 **result of that -- that legislation. And so you have a**  
10 **qualifying person who holds the license for the entity.**  
11 Q. Okay.  
12 **A. Yeah. And I was the qualifying person.**  
13 Q. What was the entity?  
14 **A. Irmiter Contractors & Builders.**  
15 Q. Okay. Were you the owner of Irmiter Contractors &  
16 Builders?  
17 **A. Yes.**  
18 Q. And then what happened to your license?  
19 **A. The license was revoked after Irmiter Contractors &**  
20 **Builders went through bankruptcy in 2000.**  
21 Q. Why was it revoked?  
22 **A. Couldn't pay my insurance. So, as soon as you can't pay**  
23 **your liability insurance, there a notices that goes from**  
24 **the insurance carrier to the State of Minnesota and that**  
25 **starts the suspension and revocation process.**

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1 Q. Okay.  
2 **A. As a result of that, there were also a number of**  
3 **allegations that were made about not paying --**  
4 **nonpayment to subcontractors, employees, which happens**  
5 **in a bankruptcy, and negotiated with the State of**  
6 **Minnesota a revocation action. Gave them my license and**  
7 **all the allegations were dropped.**  
8 Q. Was that through a consent order?  
9 **A. Yeah.**  
10 Q. Okay.  
11 **A. Yep.**  
12 Q. What year was that?  
13 **A. 2000.**  
14 Q. Okay.  
15 **A. Well, it might have been 2001. I -- 2000. 2000 -- it**  
16 **was 20 years ago.**  
17 Q. Were there any additional allega -- well, first of all,  
18 what's the entity that would have brought those  
19 allegations against you?  
20 **A. Interestingly enough, it's the State of Minnesota**  
21 **Department of Labor and Industry, which is also the**  
22 **department in 2006, which, knowing full well about all**  
23 **of these allegations, allowed me to qualify and sit for**  
24 **the test as a building code official. So I'm now**  
25 **licensed with the same entity that took a lower license**

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1 as a contractor. So the building official license is at  
2 a -- is a higher tier and a more strenuous requirement.  
3 So...  
4 Q. Were there any allegations of fraud that were brought  
5 against you by the Minnesota Department of Labor and  
6 Industry?  
7 **A. By consumers, yes. Absolutely.**  
8 Q. By consumers. You mean by consumers who had complained  
9 to the Department of Labor?  
10 **A. Yes.**  
11 Q. Okay.  
12 **A. Yep.**  
13 Q. Do you know how many --  
14 **A. All of those were disproven by the way.**  
15 Q. Do you know how many complaints consumers brought  
16 against you to the Minnesota Department of Labor and  
17 Industry?  
18 **A. Don't recall.**  
19 Q. Okay.  
20 **A. It was a lot.**  
21 Q. Do you remember if it was more than ten?  
22 **A. Don't know in terms of fraud.**  
23 Q. Okay.  
24 **A. Yeah.**  
25 Q. In the consent -- the revocation that occurred by the

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1 consent degree, were you required to admit those  
2 allegations?  
3 **A. No, I was not. In fact the dissent decree,**  
4 **specifically, the deal that was put together was there**  
5 **would be no admission to any of those allegations in**  
6 **exchange for the license. And then all -- all**  
7 **allegations were dropped. They were never vetted**  
8 **through the courts. Nobody ever testified. Nobody ever**  
9 **took testimony, just went away.**  
10 Q. Okay.  
11 **A. And the bankruptcy expunged all of that basically.**  
12 Q. All right. Have you ever worked as a contractor since  
13 your contractor's license was revoked?  
14 **A. Well, Charlie Durenberger who runs the State of**  
15 **Minnesota Licensing Division for contractors, he and I**  
16 **are good buddies now. In fact, his office just**  
17 **authorized this in December of last year, Forensic**  
18 **Building Science to put together all of the training for**  
19 **contractor licensing regarding building codes. So we**  
20 **are -- we are -- we are doing all of the online training**  
21 **now for every contractor that needs to be licensed in**  
22 **the State of Minnesota. So they obviously think we know**  
23 **what we're doing. The -- we do construction oversight**  
24 **and construction management. And so he is a -- he**  
25 **allows me and our firm to do that. So, if somebody is**

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1 renovating a building, somebody's building ground-up,  
2 somebody has a fire claim, the claim is all settled and  
3 they want somebody to monitor construction to make sure  
4 it's done correctly, not do the construction, but act as  
5 a construction manager, he's had no issue with that. So  
6 we perform that service under my sister company, Lindsay  
7 Consulting. In fact we're doing a very large fire  
8 rebuild in Birmingham, Alabama right now. It's a  
9 five-story building.  
10 Q. And you're acting as a construction manager on that  
11 project?  
12 A. Yeah. We're -- I was on the site last week. Yeah.  
13 We're -- we're acting as a construction manager and  
14 doing clearance testing and all kinds of things. So...  
15 Q. Okay. Have you done any actual construction since  
16 revocation of your license?  
17 A. Not for anybody but myself. I've renovated a few homes,  
18 yeah.  
19 Q. Okay.  
20 A. I have no desire to work in that area. Don't need to.  
21 Q. Excuse me. The bankruptcy that led to the revocation of  
22 that license, was that a personal bankruptcy, or was  
23 that the company?  
24 A. Both. Federal -- federal bankruptcy for my wife and I  
25 personally, and for the company.

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1 Q. Okay. What is -- what would you say FBS does?  
2 A. Well, FBS does building failure causation of all kinds,  
3 and we also do due diligence for purchase of buildings.  
4 We also do -- about 30 percent of our work is what we  
5 call scoping visits, where we go out and we look at a  
6 property that has been alleged to have been damaged and  
7 ascertain whether or not we think that damage is related  
8 to the event that's being claimed. So, for example,  
9 these 56 buildings, all the shingles were damaged by  
10 wind and hail. So we'll go down and take a look at it  
11 and make a determination of whether we think that that  
12 in fact is the case with regard to the -- the storm  
13 event that somebody is alleging. And I said 30 percent.  
14 We do that on all of our wind, hail, flood, tornado,  
15 hurricane work. Every one of those gets a scoping  
16 visit. Thirty percent of those go away after the  
17 scoping visit, indicate -- meaning that we don't think  
18 there's anything there worth making a claim for.  
19 Q. Okay.  
20 A. We disagree with whoever looked at it before.  
21 Q. Okay.  
22 A. Yeah.  
23 Q. And I -- I didn't mean to get sidetracked --  
24 A. Yeah.  
25 Q. -- into the -- the scoping visit issue specifically. So

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1 you said FBS does building failure causation analysis,  
2 due diligence for purchase and scoping visits. Anything  
3 else?  
4 A. Well, we write estimates. And then, through our sister  
5 company, as I indicated, we do construction oversight.  
6 Q. What was the name of that sister company again?  
7 A. Lindsay Consulting. I also run all of the appraisal  
8 work through Lindsay Consulting that I do.  
9 Q. And you're the owner of Lindsay Consulting?  
10 A. Yes. I also run the arbitration work that I do. So,  
11 for example, I have a commercial arbitration in New York  
12 that is ongoing, and I'm one of the three arbitrators on  
13 that.  
14 Q. Okay. How about in terms of serving as an appraiser and  
15 umpire, is that something you do with FBS?  
16 A. No. Through Lindsay Consulting.  
17 Q. Okay.  
18 A. Yeah.  
19 Q. Well, let me ask you this, and in terms of you  
20 personally, whether it's time spent with FBS or Lindsay  
21 Consulting, what percentage of your time is dedicated to  
22 building failure causation analysis?  
23 A. I would say 40 to 50 percent of my time.  
24 Q. And what percentage of your time is dedicated to due  
25 diligence inspections for purchase?

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1 A. About 15 percent of my time.  
2 Q. Okay. And how about scoping visits?  
3 A. I don't do scoping visits.  
4 Q. Okay.  
5 A. Our team does that.  
6 Q. Got it. All right. And --  
7 A. I mean I'll do them occasionally, but, yeah.  
8 Q. And how about estimating?  
9 A. Estimating --  
10 Q. Your time, personally.  
11 A. Yeah. Personally, probably about 15 percent of my time.  
12 Q. And how about your time personally spent doing  
13 construction oversight?  
14 A. Five to seven percent.  
15 Q. And how about your time personally serving as an  
16 appraiser or an umpire?  
17 A. That would pretty much be the rest.  
18 Q. Okay.  
19 A. I didn't -- I didn't add all those numbers up in my  
20 head, but --  
21 Q. Fair enough. Neither did I.  
22 A. -- we're getting -- we're getting close to that 100  
23 percent; although, it feels like I work 110 or 120  
24 percent each week. So maybe that's where the extra  
25 comes in.

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1 Q. Okay.  
2 **A. My wife certainly thinks I do.**  
3 Q. And then you also spend some time consulting as an  
4 expert in litigation too, correct?  
5 **A. I do, yeah.**  
6 Q. Okay.  
7 **A. Yeah. It's about 20 percent of my work overall.**  
8 Q. All right.  
9 **A. Yeah.**  
10 Q. And is that through FBS or Lindsay Consulting?  
11 **A. Both.**  
12 Q. As a litigation consultant, is there a reason that it  
13 might be done under the umbrella of FBS as opposed to  
14 Lindsay Consulting?  
15 **A. Might be a tax reason.**  
16 Q. Okay. Other than -- other than that, any reason?  
17 **A. No.**  
18 Q. Okay. In this case you were acting under the umbrella  
19 of FBS, correct?  
20 **A. Correct.**  
21 Q. Okay. Any particular reason in this case that you acted  
22 under the umbrella of FBS as opposed to Lindsay  
23 Consulting?  
24 **A. All of our fire work is done -- we actually have a third**  
25 **entity that is not -- we really haven't -- an LLC that**

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1 **A. -- we just don't track it.**  
2 Q. Taking Rocky Waters as an example.  
3 **A. Yeah.**  
4 Q. You were aware that there was an insurance claim pending  
5 when you got involved, correct?  
6 **A. No.**  
7 Q. No?  
8 **A. No, not necessarily.**  
9 Q. All right.  
10 **A. No. Chuck -- we were hired by Chuck Howarth.**  
11 Q. Okay.  
12 **A. So, at that point in time, I'm not sure if there's an**  
13 **insurance claim. I don't even know if it's Travelers.**  
14 Q. Okay.  
15 **A. I don't care.**  
16 Q. You're aware -- you're aware Mr. Howarth is a public  
17 adjuster though, right?  
18 **A. I am.**  
19 Q. Okay.  
20 **A. Yes.**  
21 Q. And you're aware, you know what public adjusters do?  
22 **A. Yes.**  
23 Q. Public adjusters represent insureds in insurance claims,  
24 correct?  
25 **A. They do, yes.**

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1 **we haven't really jump started. We set it up about four**  
2 **years ago. I think it's called Forensic Fire**  
3 **Consultants. We were going to run our fire business**  
4 **through that. We just have never done that. We just**  
5 **run it through FBS.**  
6 Q. Okay. Any other companies that you own?  
7 **A. No.**  
8 Q. What percentage of your overall work is related to  
9 either insurance claims or litigation?  
10 **A. We don't track that. In other words, when a file comes**  
11 **our way, I have -- I have somebody who called me**  
12 **yesterday about a project in Kentucky. All right. A**  
13 **metal building had been damaged by hail; is this**  
14 **something we'd be interested in looking at? They're**  
15 **going to send us over a file. We don't ask if it's in**  
16 **litigation. We have no idea if it's in litigation.**  
17 **That's not the purpose of why we inspect.**  
18 **So, for example, with regard to Rocky Waters, we**  
19 **know that there's a fire. We know that we've done a**  
20 **whole bunch of additional work in Gatlinburg. We were**  
21 **familiar with the distribution of what was going on down**  
22 **there with particulate. So we're inspecting that**  
23 **building to find out what -- what happened and what's**  
24 **going on. So --**  
25 Q. So taking Rocky --

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1 Q. Okay. Can you give me your -- I know you said you don't  
2 track it specifically. But can you give me your best  
3 estimate of the percentage of your work that's related  
4 to insurance claims or litigation?  
5 **A. I would say that --**  
6 MR. SCOTT: Object to the form.  
7 **A. I would say that about 20 percent of our overall**  
8 **business is related to insurance claims and/or**  
9 **litigation work. We can't control, once we're done**  
10 **inspecting and we issue a report, what happens. The**  
11 **course -- the course that that information takes is not**  
12 **jurisdictioned by us.**  
13 Q. Okay. Has FBS ever been hired by a municipality to do a  
14 building inspection?  
15 **A. Yes.**  
16 Q. Okay. Has FBS ever been hired to do a building  
17 inspection --  
18 **A. In fact, if I can, we just got done issuing reports on**  
19 **145 buildings at 68 locations for Nueces County, in**  
20 **Texas.**  
21 Q. Okay.  
22 **A. We just finished doing four school districts in Texas.**  
23 **We did all of the inspections for the City of Amarillo,**  
24 **Texas after a large hailstorm. So, yeah, we do**  
25 **represent municipalities.**



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1 Q. Okay. Were these -- what kind of inspections were  
2 these?  
3 **A. These were -- those were all wind and hail inspections.**  
4 Q. Okay.  
5 **A. Yeah. Yep.**  
6 Q. Have you ever been retained by a municipality to do  
7 indoor air quality testing?  
8 **A. Yes. We have actually.**  
9 Q. Okay.  
10 **A. You got it.**  
11 Q. And in what context?  
12 **A. Those were water damage claims back in the -- back in**  
13 **the heyday of EIFS and Stocco and window failure cases.**  
14 **I've done about 7,500 of those around the country. We**  
15 **were hired by schools, municipalities, churches, all**  
16 **different types of entities, as well as residential**  
17 **homes, to do sampling.**  
18 Q. Okay.  
19 **A. Yeah.**  
20 Q. And do you know if -- do you know what percentage of  
21 those cases were involved in an insurance claim of some  
22 sort or active litigation?  
23 **A. I have no idea. I have no idea. I know that there was**  
24 **clearly a change once insurance policies restricted**  
25 **coverage for mold, based on the Ballard case down in**

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1 Q. And I may have asked a bad question. I think I asked  
2 you what percentage of your work is related to water  
3 intrusion and mold. Let me just break that up.  
4 What percentage of your work today is related to  
5 mold in some way or another?  
6 **A. Probably 20 percent of the sampling that we do is**  
7 **related to mold.**  
8 Q. And I assume --  
9 **A. Yeah.**  
10 Q. -- that was much higher back about 10, 15 years ago?  
11 **A. Yes.**  
12 Q. Okay.  
13 **A. Yeah, it was.**  
14 Q. What percentage of your work today is related to --  
15 let's just strike that question.  
16 What percentage of your air sampling work is related  
17 to fires?  
18 **A. Well, there's been a huge spike in that just since**  
19 **January of this year. We seem to be out doing two or**  
20 **three a week right now. So the way it's trending in**  
21 **2020, it's going to end up being about 30 percent of our**  
22 **business this year. It's been about five to seven**  
23 **percent consistently since then, for the last four or**  
24 **five years.**  
25 Q. Okay. What percentage of your business is due to -- is

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1 **Texas. So that changed the dynamic. People still had**  
2 **problems. They still wanted to know what was going on,**  
3 **but generally those were not insurance related claims.**  
4 Q. Okay.  
5 **A. So...**  
6 Q. Can you elaborate on that, where you were doing more  
7 mold related work or water intrusion work?  
8 **A. Yeah. Mold, mold related work to water instruction.**  
9 Q. Prior to the Ballard case?  
10 **A. Prior to the Ballard case, yeah.**  
11 Q. Okay.  
12 **A. And less as that -- as that changed policy languages.**  
13 Q. All right.  
14 **A. Yeah. And also less as concurrent cause issues started**  
15 **to come into policies.**  
16 Q. What percentage of your work today is related to water  
17 intrusion or mold?  
18 **A. Probably -- in fact, we're going to be sampling next**  
19 **week in North Carolina on a hurricane claim. I would**  
20 **say we probably sample 50 percent of the time when there**  
21 **is water intrusion issues that have occurred. Now it's**  
22 **primarily for scope and safety reasons, health and**  
23 **safety reasons.**  
24 Q. Okay.  
25 **A. Yeah.**

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1 related to wildfires?  
2 **A. This year that will trend at about 10 percent of that**  
3 **30 percent. Yeah.**  
4 Q. Any particular wildfires, or...  
5 **A. Doing a lot of work in California right now.**  
6 Q. Okay. How many -- how many matters were you involved in  
7 related to the 2016 Gatlinburg wildfires?  
8 **A. I think we did 30 to 40 structures and buildings down**  
9 **there of various types. Yeah.**  
10 Q. How many of those cases was Mr. Howarth involved in?  
11 **A. All of them.**  
12 Q. Okay.  
13 **A. Yep.**  
14 Q. How long have you known Chuck Howarth?  
15 **A. About five years.**  
16 Q. And what's your understanding of what Mr. Howarth does?  
17 **A. My understanding is that Mr. Howarth is a public**  
18 **adjuster, and that's -- that's about the extent. Yeah.**  
19 **I don't know. I actually don't know his background in**  
20 **terms of, you know, how he became a public adjuster, how**  
21 **he got his boots on the ground.**  
22 Q. Okay.  
23 **A. Whether he was a contractor. I don't know any of that**  
24 **stuff.**  
25 Q. Do you know anything about his technical background or



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1 training or expertise other than the fact that he's a  
2 public adjuster?  
3 **A. No.**  
4 Q. Okay. Do you know what Mr. Howarth's role was in the  
5 Rocky Waters' case?  
6 **A. No. I know he hired us to do sampling and that was it.**  
7 **I don't know if he was a consultant for Rocky Waters. I**  
8 **don't know if he was acting as a PA, what he was doing.**  
9 Q. Okay.  
10 **A. Because I had some projects with him where he is a**  
11 **consultant. You know, he brought us in and he's not a**  
12 **PA on it. So...**  
13 Q. For your work of any kind that's related to insurance  
14 claims or active litigation, can you give me a percent  
15 of that work that is where you're brought in on behalf  
16 of the policyholder?  
17 **A. It's probably in excess of 95 percent, yeah.**  
18 **Interestingly enough, however, the cases, of the 14, I**  
19 **got 16 trials here that are -- and we update this every**  
20 **four years, but I think five of the -- four or five of**  
21 **the ones on here are for defense.**  
22 Q. Okay.  
23 **A. So...**  
24 Q. How about within the last year, what percentage of your  
25 litigation or insurance claim related cases are on

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1 **A. Absolutely. Yes.**  
2 Q. Okay. And you know who Neil Carlson is, correct?  
3 **A. I do, yes. Neil and I have worked together a lot over**  
4 **the years. We met each other doing some of those EIFS**  
5 **deals. Neil -- I brought Neil into the largest**  
6 **pharmaceutical disaster case in US history that I was**  
7 **the expert on, out in Framingham, Massachusetts. It was**  
8 **a fungal meningitis case, and Neil was one of the**  
9 **consultants I brought in on that case.**  
10 Q. That's how you first met him?  
11 **A. No, no. I had known him 10 years before that.**  
12 Q. How did you meet him?  
13 **A. I met him through -- I can't remember if it was the --**  
14 **there was a project here in Minnesota. It was the -- it**  
15 **was the BlueCross BlueShield, I think, Insurance**  
16 **building, and it was a massive construction defect mold**  
17 **case. There were a whole bunch of different consultants**  
18 **involved, and Neil was there. I think that's where I**  
19 **met him the very first time.**  
20 Q. Okay.  
21 **A. Yeah.**  
22 Q. Can you give me an estimate of the number of matters on  
23 which you've worked with Neil Carlson?  
24 **A. Oh, man. I bet it's 500.**  
25 Q. Okay. How about over all, what are the number of

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1 behalf of the plaintiff or policyholder?  
2 **A. Again, probably well over 95 percent, yeah. You have to**  
3 **understand, this list that you have in front of you are**  
4 **actually things that went to a deposition or a trial.**  
5 **So we don't -- it doesn't hit this list. So I don't**  
6 **necessarily --**  
7 Q. Sure.  
8 **A. -- remember it. I know that 94 percent of the projects**  
9 **that we issue a report on we never see the light of day**  
10 **of that reporting.**  
11 Q. Okay. In other words --  
12 **A. They go away.**  
13 Q. In other words, you might issue a report. It might --  
14 the insurance claim might be paid satisfactorily, or it  
15 might never go to litigation, correct?  
16 **A. Who knows.**  
17 Q. Okay.  
18 **A. I mean we just never know what happens. We literally**  
19 **every quarter have to call all of the people that we**  
20 **have open files on and find out. Oh, yeah, that's no**  
21 **longer active. That's done. So...**  
22 Q. So, regardless of whether it went to deposition or went  
23 to trial, though, in excess of 95 percent of your work  
24 is on behalf of the policyholder or the plaintiff,  
25 correct?

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1 matters that you worked on with Chuck Howarth?  
2 **A. Well, I mentioned this 30 or so, or 40 in Gatlinburg. I**  
3 **would say it's probably 100 total in the last six years.**  
4 Q. And my understanding is that Mr. Howarth used to be  
5 associated with George Keys, correct?  
6 **A. I actually didn't know that.**  
7 Q. Okay.  
8 **A. I've heard that recently. I did not know that he was**  
9 **associated with George.**  
10 Q. Do you recall working any matters with Mr. Keys while  
11 Mr. Howarth and Mr. Keys were associated?  
12 **A. I don't know the time frame. I will tell you that I**  
13 **went down to Florida about nine years ago to meet with**  
14 **Mr. Keys over breakfast, to talk about looking at a**  
15 **bunch of high-rises that had hurricane damage, and that**  
16 **was the extent. We had -- we had a breakfast meeting**  
17 **and nothing ever came of it.**  
18 Q. Okay.  
19 **A. So -- so I've never worked with the guy.**  
20 Q. Oh, okay.  
21 **A. Yeah.**  
22 Q. And I don't care about Mr. Keys in this case, but...  
23 **A. I know. I know. Yeah.**  
24 Q. I've heard the name in other cases, but...  
25 **A. Oh, we all have, especially Colorado.**

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1 Q. Yeah. How about with Mr. Scott, Rocky Waters' attorney,  
2 how many matters have you had with Mr. Scott or his law  
3 firm?  
4 **A. I'll lean in and I'll say I've had the pleasure of**  
5 **working with Mr. Scott probably about six times; six,**  
6 **seven times. Yeah.**  
7 Q. And have those all about been related to the Gatlinburg  
8 wildfires?  
9 **A. No. No. We just had a federal court case in Albany,**  
10 **Georgia about a month ago, a hail case that went to**  
11 **trial, with him. We've had -- I had another trial that**  
12 **we had with them, I think, last November. Somehow I**  
13 **think with them it has been more weather related stuff**  
14 **that we've worked on.**  
15 Q. Okay.  
16 **A. We've done very little work in fire with them.**  
17 Q. Yeah. You actually --  
18 **A. Yeah.**  
19 Q. -- I think just answered my next question. What were  
20 the issues in the other cases --  
21 **A. Yeah.**  
22 Q. -- you've worked on with Mr. Scott's firm?  
23 **A. All weather.**  
24 Q. Okay.  
25 **A. Yeah.**

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1 Q. How about Mr. Brandon McWherter? Have you had any  
2 additional cases with Mr. McWherter?  
3 **A. When I say Scott, I basically say the firm.**  
4 Q. Okay.  
5 **A. So that would be McWherter or Scott.**  
6 Q. Okay.  
7 **A. Yeah.**  
8 Q. Have you ever been barred by a court as an expert?  
9 **A. Yes.**  
10 Q. Do you know how many times?  
11 **A. One time.**  
12 Q. Okay. What case was that?  
13 **A. Back in 2005, it was here in Minnesota.**  
14 Q. Do you remember the name of the case?  
15 **A. No. I can tell you the details. So this was back in**  
16 **the Stucco, water intrusion days. And a client with**  
17 **about a 12,000 square foot house was having some issues**  
18 **with mold coming in around their windows. We went out.**  
19 **I personally went out and investigated, performed some**  
20 **forensic cuts and determined that the house had been**  
21 **constructed improperly. Then also had had an addition**  
22 **that had been put on a year and-a-half before that.**  
23 **Minnesota has a ten-year statute of repose against**  
24 **construction defects. I discovered this at year 11.**  
25 **The addition that had been put on was put on at year**

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1 **nine. So it still fell under the statute of repose for**  
2 **the general contractor. What we found is that when the**  
3 **contractor that did the addition was cutting into the**  
4 **building, he had covered up all this rot. So he knew at**  
5 **that point that this was going on. Did not notify the**  
6 **owner. So because the statute of repose had gone past**  
7 **the ten-year, these people had no action back against**  
8 **the original builder. He got a get-out-of-jail-free**  
9 **card. So the concept was is that this remodeler now**  
10 **inherits this entire mess because of the fraudulent**  
11 **concealing -- concealment.**  
12 **So I was asked to testify on the duties of a**  
13 **licensed contractor, and the Court ruled that because I**  
14 **didn't have a license at that time I could not testify**  
15 **on those duties. I then became licensed as a building**  
16 **code official in 2006, which then took care of that**  
17 **technical issue.**  
18 Q. Okay. Was that the Hopperstad case?  
19 **A. No.**  
20 Q. No? Okay.  
21 **A. That's an interlocutory decision. I don't consider that**  
22 **a ruling, but anyway. My --**  
23 Q. Well, what do you mean by that?  
24 **A. Well, it's not a published case. I mean that's a judge**  
25 **ruling from the bench basically on the Hopperstad thing.**

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1 **So, yeah.**  
2 Q. Okay. What was the ruling on the Hopperstad?  
3 **A. I don't recall.**  
4 Q. Okay.  
5 **A. I know the case settled that day.**  
6 Q. Do you know, were you barred as an expert by that Court?  
7 **A. I may have been, yeah. Yeah.**  
8 Q. Are you aware --  
9 **A. You know, Counsel, I'm going to tell you something. All**  
10 **of this has been vetted out. We -- we can spend all day**  
11 **going through this, and you can file your motions in**  
12 **limine, but I will tell you that I'm guessing Mr. Scott**  
13 **will respond with about 25 answers to that motion in**  
14 **limine that have been vetted out in virtually every**  
15 **court in the land indicating that all of the stuff**  
16 **you're talking about has no difference on my ability to**  
17 **testify as a causation --**  
18 Q. Okay.  
19 **A. -- damages and code expert. So I know you need to make**  
20 **a record.**  
21 Q. Well, at this point --  
22 **A. Yeah.**  
23 Q. -- I'm just asking questions.  
24 **A. I understand. I understand.**  
25 Q. And I'm sure Mr. Scott will do a very fine job of that.

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1     **A. I'm sure he will.**  
2     Q. What about Church versus --  
3     **A. Including the four and-a-half hours of voir dire in**  
4     **federal court two weeks ago.**  
5     Q. What about Church versus Church Mutual, Northern  
6     District of Illinois? Are you familiar with that case?  
7     **A. Yeah. I wasn't barred in that case.**  
8     Q. Okay.  
9     **A. I absolutely was not barred.**  
10    Q. Okay.  
11    **A. Disagree with that completely. Barring me from**  
12    **testifying as opposed to --**  
13    Q. I'm just asking about --  
14    **A. -- dismissing my report. No, let's talk about the facts**  
15    **on that case. You brought it up.**  
16    Q. I'm asking just asking about -- I'm asking you about the  
17    case.  
18    **A. Yeah. Yeah.**  
19    Q. Just that's all I want to know --  
20    **A. Great. Great. So --**  
21    Q. -- is your interpretation of that.  
22    **A. So we -- so we are -- I'm hired by the Voss Law Firm to**  
23    **determine what damage has been caused as a result of an**  
24    **ice dam. I provide a lengthy report, including a**  
25    **weather analysis of this. The insurance company files a**

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1     **motion to exclude, and the Voss Law Firm never responds**  
2     **to the motion, never responded to it. I hear about it**  
3     **six months later in a deposition. Two very important**  
4     **facts that would have been responded to. One, the judge**  
5     **said that I had no training in weather, yet on my CV I'm**  
6     **a Metro Trained Weather Spotter. I have specific**  
7     **training in analyzing weather and NOAA data, which I**  
8     **did. That was never -- we never got a chance to respond**  
9     **to that.**  
10    **Secondly, I rely -- which an expert can do -- on**  
11    **first-party testimony from the minister in the church.**  
12    **Walked through the church and said show me the old**  
13    **damage, show me the new damage. All right. Some of**  
14    **what I disagreed with him in terms of him saying it was**  
15    **new damage. All of that would have been vetted had we**  
16    **had a chance to answer this, but we -- I didn't have a**  
17    **chance to answer that. It turns out the guy that I got**  
18    **the information from wasn't even at the church at the**  
19    **time. So I relied on information that was incorrect.**  
20    **Didn't have a chance to -- to answer any of that. So,**  
21    **you know what. Yeah, that's out there. I don't believe**  
22    **that that barred me from testifying.**  
23    Q. Okay.  
24    **A. So...**  
25    Q. Have you ever been accepted by a court as an expert in a

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1     wildfire debris case?  
2     **A. They've all settled.**  
3     Q. Okay.  
4     **A. Yeah.**  
5     Q. Can you tell me about how many reports you've authored  
6     in wildfire debris cases?  
7     **A. Probably 80 - 85, somewhere in that range.**  
8     Q. All different fires, or...  
9     **A. Yeah.**  
10    Q. Okay. Are you an expert in microscopy?  
11    **A. No. I certainly understand the concepts of it. I've**  
12    **looked in the microscope with Neil, but, no, I'm not**  
13    **trained as a microscopist. I know how to say the word,**  
14    **which is probably the hardest thing.**  
15    Q. Okay. Is there a particular material composition that  
16    wildfire residue has, if you know?  
17    **A. Yes.**  
18    Q. And what is that?  
19    **A. Well, typically wildfire is going to throw out char.**  
20    **There will be some soot and the -- the distribution of**  
21    **that material will change over time in terms of the**  
22    **percentage of material that you see. So, for example,**  
23    **if you're sampling a location three days after the fire,**  
24    **your char and your soot, if it's there, will be there.**  
25    **If you sample that location two years later, if it**

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1     **hasn't been remediated, your char and your soot will**  
2     **still be there. All right. But the percentage of that**  
3     **char and soot in that field will be less because of**  
4     **additional particulate that has come in.**  
5     Q. Okay.  
6     **A. So, if I have 10 parts of char three days later, the 10**  
7     **parts of char don't go away. They become two parts of**  
8     **char as a percentage because more particulate has been**  
9     **added.**  
10    Q. Okay. Beyond that, is there anything else unique about  
11    the composition of wildfire residue?  
12    **A. Well, it depends on the chemical analysis. I mean we**  
13    **certainly would -- in an elemental analysis, the**  
14    **compounds, the single elements, we might expect to see**  
15    **-- in an interior fire, for example, we might expect to**  
16    **see, depending on the age of the building, a lot of**  
17    **chlorine. In a wildfire, we might not see as much. We**  
18    **might see a lot of sodium in an interior fire because**  
19    **sodium is the single largest compound element that is**  
20    **used in building materials, to hold them together. It**  
21    **holds together Sheetrock. It holds together vinyl**  
22    **windows. It holds together vinyl base, carpeting. So**  
23    **in that type of a fire you'll get a huge increase in the**  
24    **sodium uptick. Same with calcium. So it really is an**  
25    **elemental question at that point in time. We didn't do**

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1 **elemental analysis on this case.**  
2 Q. Okay. Are you aware of any published studies describing  
3 the elemental composition of wildfire residue?  
4 **A. Absolutely. We've referenced them in our report.**  
5 Q. Okay.  
6 **A. Yeah.**  
7 Q. Are you aware of any published studies regarding how to  
8 differentiate between wildfire debris and other fire  
9 debris?  
10 **A. Absolutely. We reference them in our report.**  
11 Q. Okay. And which studies are those referenced in your  
12 report?  
13 **A. It's not a memory test. I'd have to see my report.**  
14 Q. All right. Well, here.  
15 **A. Yeah.**  
16 MR. DEVILLING: Let's mark your report.  
17 Clint, I'm going to mark -- I'm going to mark Days  
18 Inn as Exhibit 2.  
19 THE WITNESS: I thought we were hear for --  
20 excuse me. I thought we were here for the Creek Side.  
21 THE REPORTER: For the what? I didn't hear  
22 you.  
23 THE WITNESS: I thought we were here for  
24 Creek Side or whatever.  
25 MR. DEVILLING: Rocky Waters.

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1 THE WITNESS: Rocky Waters. Why would we be  
2 marking Days Inn?  
3 MR. DEVILLING: They own both hotels.  
4 THE WITNESS: My understanding is I only  
5 prepared for the Rocky Waters' deposition today, and  
6 that's what I was told.  
7 Clint.  
8 MR. SCOTT: Yeah.  
9 MR. DEVILLING: Do you guys want to talk off  
10 the record, take a quick break?  
11 MR. SCOTT: Sure.  
12 MR. DEVILLING: All right. Let's take a  
13 quick break.  
14 THE WITNESS: All right.  
15 THE VIDEOGRAPHER: And we are going off the  
16 record, and the time is 9:44 a.m.  
17 (Break taken at 9:44 a.m. - 9:49 a.m.)  
18 THE VIDEOGRAPHER: We're back on the record,  
19 and the time is 9:49 a.m.  
20 MR. SCOTT: All right. This is Clint Scott.  
21 The plaintiff in the case is Rocky Waters Motor Inn,  
22 LLC, which owns the Rocky Waters Motor Inn and also the  
23 Days Inn. And apparently there was some confusion on  
24 our end as far as document production for today in  
25 clarifying that this deposition was not just for Rocky

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1 Waters Motor Inn, but it was also for Days Inn under  
2 the Rocky Waters Motor Inn, LLC umbrella. And so we  
3 will supplement that. As we were asked to bring the  
4 file, we did produce the file materials for the Rocky  
5 Waters Motor Inn, but not Days, but we'll get that done  
6 promptly, and I apologize.  
7 MR. DEVILLING: No problem. I'm sure we can  
8 get through this just fine. I will mark -- let me mark  
9 Rocky Waters then as the -- as Exhibit 2.  
10 (Exhibit 2 is marked for identification.)  
11 MR. DEVILLING: And I'll mark Days Inn as  
12 Exhibit 3.  
13 (Exhibit 3 is marked for identification.)  
14 Q. (MR. DEVILLING) Okay. You've got Exhibit 2 and  
15 Exhibit 3 in front of you. Do those appear to be your  
16 reports for the Rocky Waters Motor Inn and the Days Inn  
17 in Gatlinburg?  
18 **A. Yes.**  
19 Q. Okay. The reason I have handed those to you, I was  
20 asking you about published studies to describe the  
21 elemental composition of wildfire debris. Can you  
22 identify, based on your reports there, which published  
23 studies discuss the elemental composition of wildfire  
24 debris?  
25 **A. There are none. I referenced -- we issue typically two**

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1 **types of reports for all of our fire investigation. One**  
2 **is a very condensed letter and the other is a report**  
3 **that cites the documents that we typically reference.**  
4 **It cites the ASTM standards that the testing is done**  
5 **under. That was not in done in this case. These are --**  
6 **these are letters to Mr. Howarth. That was what we were**  
7 **asked to provide, and that's what we charged for**  
8 **essentially was the analysis and basically the findings.**  
9 Q. Okay. So, as you sit here today, can you identify any  
10 published studies describing the elemental composition  
11 of wildfire debris?  
12 **A. Can I describe any?**  
13 Q. Can you identify any?  
14 **A. Well, I know that we op -- boy, I'd have to put them all**  
15 **to memory. There's a -- it's a -- it's a -- it's a list**  
16 **of about 30 citations and publications that we typically**  
17 **use on these cases, but they're not referenced here.**  
18 Q. Okay.  
19 **A. So I will --**  
20 Q. Do you remember any right now?  
21 **A. Well, I know ASTM D6603, which is a sampling methodology**  
22 **that we utilized and that Carlson would have followed in**  
23 **terms of his analysis in the lab. I know there's a -- I**  
24 **think it's Drysdale. I know there's a book on wildfires**  
25 **from Drysdale. I know there's a bunch of different**

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1 published papers on wildfires that we've dealt with. I  
2 know there's some documents dealing with damage to  
3 electrical components as a result of fires in general.  
4 I know there are some NFPA codes and things that we  
5 reference and building codes. We typically would  
6 reference the building codes that are in place at the  
7 time in that larger report. We would have gone more in  
8 depth typically on the design of the building, open  
9 atmosphere building, and we talk a little bit about  
10 that, but how -- how air distributes. In other words,  
11 how did the -- how did the soot and/or char get into the  
12 attic.

13 Q. Okay.

14 **A. There's got to be a way for it to happen. So we would**  
15 **go through that mechanism typically.**

16 Q. Okay.

17 **A. Yeah.**

18 Q. Any other specific materials that you can recall right  
19 now that address the elemental composition of wildfire  
20 debris?

21 **A. No.**

22 Q. Okay. You've used the term soot and you used the term  
23 char. Can you -- let's start with soot. What is soot?

24 **A. Well, soot is an aciniform, I believe is the term, and**  
25 **it's when you have pyrolysis, which is the burning of a**

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1 I -- or a fireplace. I don't burn plastic in my  
2 fireplace. Okay. So it will throw off a completely  
3 different appearance essentially.

4 And then, of course, the last would be ash, which  
5 is really getting down to the last elements before it  
6 kind of evaporates and completely disappears or  
7 aerosolizes. Or so we're sampling primarily in  
8 wildfires for char and soot.

9 Q. Okay.

10 **A. Yeah.**

11 Q. So, if I'm understanding your answer, there's sort of  
12 these described different stages of the combustion  
13 process with soot being the -- I'm sorry. Char, the  
14 char being the earliest stage in the combustion process,  
15 and then soot, and then ash, right?

16 **A. Yes.**

17 Q. And ash is, basically, it's burnt as much as it can  
18 possibly burn, right?

19 **A. Yes.**

20 Q. Okay. And char is most determinative of a wildfire?

21 **A. Yes. Yes.**

22 Q. Okay.

23 **A. That's typically what we see the most of in a wildfire.**

24 Q. And why is char most consistent with a wildfire?

25 **A. Just the distribution of the -- of the wind. I mean**

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1 -- of a product, whether it's wood, whether it's  
2 plastic, polymers, whatever, the -- it throws off,  
3 obviously, smoke. That's -- that's why we know there's  
4 a fire going on. It throws off a smell. That's why we  
5 know there's a fire going on. And the breakdown of that  
6 material typically has about three -- three to four  
7 stages. One of the larger stages would be char, which  
8 is material that is not fully pyrolyzed. It's not  
9 completely burnt up. It hasn't disappeared. Those are  
10 going to be usually larger chunks, typically 20, 10 to  
11 20 microns in size, maybe as small as 5 microns in size.  
12 Some of those you might be able to see with your naked  
13 eye, the larger ones. Most of those that we sample for  
14 you're not going to be able to see. They're going to be  
15 microscopic in size. You need to look under a  
16 microscope to see them.

17 The next generation of that would be soot, which is  
18 that char that has burned further in the process. It's  
19 going to have a different look to it. It's going to be  
20 more cylindrical. It also may form into grapelike  
21 patterns. It looks like a bunch of grapes. That  
22 typically indicates that it is from a complex fire  
23 because the elements are chained together. And in that  
24 sense, that would tell us that this isn't from a  
25 wood-burning stove, because I don't know about you, but

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1 the way that the -- the way that the smoke is enveloping  
2 a building from the exterior and the -- the materials  
3 that are being distributed in a wildfire. There's just  
4 a lot more char than there is any of the soot kinds of  
5 things. It's also -- depending on when you're looking,  
6 it's also really hard to find the soot in a wildfire.  
7 It does exist. It's not as much. It's going to be at  
8 lower levels. The other thing, the studies that I have  
9 read have indicated that you can also have soot that is  
10 bonded to that char. So somebody identifying char,  
11 there may be soot on there as well.

12 Q. Okay.

13 **A. Now, again, this is depending on what level of analysis**  
14 **you're doing. The first step is visual, but then there**  
15 **are other steps after that.**

16 Q. Let's take soot first. I'm going to ask you certain  
17 things, whether they produce soot. Do car emissions  
18 produce soot?

19 **A. Yes. Typically spherical in nature and easily**  
20 **distinguishable between a soot that is from a compound**  
21 **fire versus soot that comes from a car, gasoline or**  
22 **diesel.**

23 Q. Okay.

24 **A. It looks different.**

25 Q. Does the leaf burning produce soot?

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1     **A. Absolutely.**  
2     Q. Does -- would an indoor fireplace produce soot?  
3     **A. Yes.**  
4     Q. An outdoor fire pit would produce soot?  
5     **A. Yes.**  
6     Q. Okay. How about smoking cigarettes? Would that produce  
7     soot?  
8     **A. A different type, a nicotine type, yes.**  
9     Q. Okay.  
10    **A. We've actually sampled for nicotine in restaurants that,**  
11    **you know, used to allow smoking. Now there's a fire.**  
12    **And we've been able to, through various labs that we**  
13    **work with around the country, we've been able to find**  
14    **the actual soot from the fire that is embedded on top of**  
15    **the nicotine soot. It's a completely different**  
16    **composition.**  
17    Q. And what's the difference in composition?  
18    **A. The way it looks under the microscope.**  
19    Q. Okay.  
20    **A. That's really the issue. Yeah. The way it looks under**  
21    **the microscope and the chemical -- when I say chemical,**  
22    **the elemental breakup of that material, how it's made**  
23    **up.**  
24    Q. Okay. Do you know -- do you know specifically what the  
25    elemental makeup is of cigarette smoke versus wildfire

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1     residue?  
2     **A. That's a completely dependent question. That could**  
3     **change. That's a dynamic question. That could change**  
4     **depending on the -- the type of leaf, the state of the**  
5     **leaf. So, no, I don't think that you could draw an**  
6     **absolute to say that. It might be different depending**  
7     **on whether the cigarette is -- where the cigarette's**  
8     **manufactured as well. So I don't know that there is a**  
9     **one size fits all answer to that.**  
10    Q. Right.  
11    **A. Yeah.**  
12    Q. And I'm not asking about --  
13    **A. Right.**  
14    Q. I'm asking about leaf burning.  
15    **A. Right. I understand. I understand.**  
16    Q. Okay.  
17    **A. Some of the same elements that would show up in a**  
18    **wildfire on the indoor environment, you would expect**  
19    **would also show up from burning of leaves, because you**  
20    **would expect in a wildfire that there are leaves that**  
21    **have burned.**  
22    Q. Okay.  
23    **A. So that would be a marker that you could look for.**  
24    Q. We talked about indoor fireplace use a little bit.  
25    Excuse me. What's the difference in elemental -- excuse

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1     smoke?  
2     **A. I don't recall seeing -- and I've studied this for 10**  
3     **years all the literature that I can get my hands on. I**  
4     **do not recall seeing a study -- it may be out there --**  
5     Q. Okay.  
6     **A. -- where the elemental makeup of a cigarette of and by**  
7     **itself versus the elemental makeup of a cigarette that**  
8     **now has another complex, you know, fire burn added to**  
9     **it, and what those elements would look like.**  
10    Typically what we would see with -- when we're  
11    asking for elemental breakup, is we would see a chart  
12    that lists the various elements that are there. There  
13    may be, you know, nine from the cause and origin  
14    location. And then what we would do is those are  
15    markers. We would look for those similar markers at the  
16    other locations, which would make -- that's one way of  
17    saying, yeah, this looks like it's from the fire.  
18    Q. Okay.  
19    **A. That was not done by us in this case.**  
20    Q. As you sit here today, do you know the difference  
21    elementally between cigarette smoke and wildfire smoke?  
22    **A. Do I know the difference elementary?**  
23    Q. Elementally.  
24    **A. No.**  
25    Q. Okay. How about between burnt leaves and wildfire

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1     me. Let me just strike that question and finish  
2     drinking my water.  
3     MR. DEVILLING: I'm losing my voice, Clint.  
4     This might be a short day.  
5     MR. SCOTT: I object to you drinking water  
6     then.  
7     MR. DEVILLING: I might need to go get an IV  
8     at the rate it's going. All right.  
9     THE WITNESS: Let's hope you don't have  
10    coronavirus because then all of us are going to be...  
11    MR. DEVILLING: No, none of that, I don't  
12    think.  
13    THE WITNESS: All right.  
14    MR. DEVILLING: I did just take a vacation  
15    in China, but, no, I didn't.  
16    MR. SCOTT: I had heard you were in the  
17    Wuhan Province.  
18    MR. DEVILLING: Yeah. That's what I was  
19    trying to think of.  
20    Q. (MR. DEVILLING) All right. What's the -- what's the  
21    elemental difference between smoke generated from an  
22    indoor fireplace as opposed to a wildfire?  
23    **A. We will have more elements in a wildfire. There's no**  
24    **question. Every time we've -- and in this case we did**  
25    **take concurrent tape lifts to have Carlson do**



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1 presumptive and then to have the ability to send those  
2 in to do an elemental analysis. That was not requested  
3 by the client.  
4 Q. What do you mean presumptive?  
5 **A. Well, presumptive sampling, or some people call it Level**  
6 **1. The ASTM D6603 calls it screening. It's a broad**  
7 **spectrum screening that is done to determine**  
8 **distribution of particulate. If -- if that screening**  
9 **comes back and there's just really little distribution,**  
10 **there's no reason to go to another level of sampling.**  
11 **It's inexpensive. It's quick. The presumptive nature**  
12 **means that there are four of us here in this room. If**  
13 **we were all trained as microscopists, we would look**  
14 **under that microscope at that sample and each of us,**  
15 **based on our education, training and experience, would**  
16 **give an opinion of what we think we are seeing**  
17 **underneath that microscope.**  
18 **Mr. Carlson's been teaching this for a number of**  
19 **years. I will tell you that in the cases where we have**  
20 **taken the concurrent samples, sent them, Carlson does**  
21 **the screening, we send them to a secondary lab to do**  
22 **what's called a Level 4 analysis, 85 percent of the time**  
23 **he is accurate on his presumptive. That was actually**  
24 **borne out in this case with the second set of sampling**  
25 **that was done by, I think it was Medina is the guy's**

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1 name. So he confirmed that what Carlson was seeing was  
2 accurate as well. So...  
3 Q. Well, what is the difference between a Level 1 and Level  
4 4 testing?  
5 **A. You can get an analysis of the actual materials.**  
6 Q. Like an elemental analysis?  
7 **A. Yeah. Yeah.**  
8 Q. Oh, I see.  
9 **A. You can actually look at it and say, yeah, you know**  
10 **what, this is not -- this is not a black paint spec.**  
11 **This is not a piece of rust that's blackened. This is**  
12 **not a piece of -- this is not carbon black, you know,**  
13 **from a -- from diesel or something. This is actually**  
14 **consistent with particulate from a wildfire.**  
15 Q. Okay.  
16 **A. So...**  
17 Q. You referenced Mr. Medina's report. Medina analyzed his  
18 own samples, correct?  
19 **A. No. I thought he took them to -- I thought -- no. My**  
20 **understanding was he sent them to Analytical Analysis.**  
21 Q. That was a bad question.  
22 **A. Yeah.**  
23 Q. My question was, did Mr. Medina analyze the same samples  
24 that Mr. Carlson analyzed?  
25 **A. No.**

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1 Q. Okay.  
2 **A. Mr. Medina took his own and under chain of custody took**  
3 **them to a third-party lab.**  
4 Q. Was there a reason that you did not utilize a Level 4  
5 laboratory before issuing your report?  
6 **A. As I indicated to you before, we have -- we had the**  
7 **samples to do that and we -- Mr. Howarth did not want to**  
8 **do that.**  
9 Q. Okay.  
10 **A. We always do concurrent sampling. I mean, when you're**  
11 **there, why wouldn't you? It takes -- it's one extra**  
12 **tape lift. You have them. It's one extra Air-O-Cell.**  
13 **So...**  
14 Q. So, if you were to do that, you would just take like two  
15 tape lifts from the same area?  
16 **A. Yeah.**  
17 Q. And then send one to the Level 1 lab and one to the  
18 Level 4 lab?  
19 **A. Yes.**  
20 Q. Okay.  
21 **A. And typically, if we were to take -- so, for example, we**  
22 **just finished a large hotel project where we did 120**  
23 **samples. I think we have an additional 120 concurrent.**  
24 **If we were to send those back in for secondary sampling,**  
25 **we wouldn't do all 120. We would look at the**

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1 distribution pattern and we'd say, okay, now let's send  
2 in -- let's verify in these locations so that we can get  
3 an idea of how they're distributed.  
4 Q. Is Mr. Carlson's lab capable of doing Level 4 testing,  
5 do you know?  
6 **A. You'll have to ask him. I don't. I don't know that he**  
7 **does that. I don't think they have the equipment. I**  
8 **think he knows how to use the equipment, but I don't**  
9 **think he has the equipment.**  
10 Q. Do you know what -- what temperature the Gatlinburg  
11 fires were burning at?  
12 **A. Not offhand. I mean it would be -- that would be -- at**  
13 **what location? At what time of day --**  
14 Q. Sure.  
15 **A. -- specifically? Yeah, I mean...**  
16 Q. Do you know the highest temperature that the fire  
17 reached?  
18 **A. I saw some melted steel out there in a few places. So I**  
19 **mean we got to be 1,200 degrees or more at that point in**  
20 **time at those areas.**  
21 Q. Okay.  
22 **A. So...**  
23 Q. Did you ever go to either of the Days Inn or the Rocky  
24 Waters Motor Inn?  
25 **A. Yes. I've been there twice.**



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1 Q. Okay.  
2 **A. I was there. I've been to Gatlinburg I think four or**  
3 **five times. I was there on the 29th of January, the**  
4 **last time, of this year. I happened to be in Knoxville**  
5 **for a deposition I believe it was. And so I went in a**  
6 **day early and took the trip down there and went to both**  
7 **of these locations.**  
8 Q. Okay.  
9 **A. Yeah.**  
10 Q. So that was the -- you said the 29th of January of this  
11 year?  
12 **A. 2020. Yeah.**  
13 Q. Okay. Prior to that, had you been there?  
14 **A. Yes.**  
15 Q. What was the other occasion on which you were there?  
16 **A. I'd have to look back at the actual dates. Like I said,**  
17 **I've been down there. I was down there for a two-day**  
18 **appraisal hearing with Howarth on one of the restaurants**  
19 **in town, where we provided testimony, both sides to the**  
20 **-- to an appraisal panel, and I -- we had already**  
21 **sampled at some loca -- and I visited, you know, the**  
22 **next day a bunch of sites that we had already been to.**  
23 **So...**  
24 Q. Well, let's talk about those, those visits. During your  
25 first visit, did you speak with any employees of the

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1 hotel?  
2 **A. No.**  
3 Q. Okay.  
4 **A. No. That was -- all that -- all that interaction was**  
5 **going to be done -- was done or was going to be done by**  
6 **my team.**  
7 Q. Okay. How about during the second visit, did you speak  
8 with anyone who worked at the hotel?  
9 **A. No. Other than the person, hey, I'm -- and my staff**  
10 **would have called and arranged, hey, Tom's going to be**  
11 **in town, can he get access to the... Yeah. Just like**  
12 **the last -- just like on the 29th. We did the same**  
13 **thing.**  
14 Q. Did you ever conduct any interviews, whether it was in  
15 person or by phone, with any employees of Rocky Waters  
16 Motor Inn or Days Inn?  
17 **A. No.**  
18 Q. Do you know -- do you know whether there were any  
19 chemicals that were used to retard the Gatlinburg fires?  
20 **A. Offhand, as I sit here today, I do not.**  
21 Q. Okay.  
22 **A. It would certainly make sense.**  
23 Q. Would you typically expect to see traces of fire  
24 retardant in wildfire debris?  
25 **A. It's possible, yes.**

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1 Q. Do you know if there were any traces of fire retardant  
2 in the debris samples that you took?  
3 **A. Not that we took. We didn't analyze to that level.**  
4 Q. When you visited the Days Inn and Rocky Waters Motor Inn  
5 on either occasion, did you wear any personal protective  
6 equipment?  
7 **A. No.**  
8 Q. Okay. And who from your team actually took the samples  
9 that Mr. Carlson tested?  
10 **A. Adam Piero.**  
11 Q. Do you know if Mr. Piero wore any personal protective  
12 equipment when he took those sample?  
13 **A. Yes. He would have had -- and there's pictures of him.**  
14 **He would have his rubber gloves on, which he would**  
15 **change after each sample, which is our protocol, and he**  
16 **would also have an N99 mask on.**  
17 Q. Like a dust mask?  
18 **A. Yeah.**  
19 Q. Okay. And what's the purpose of that dust mask? Is it  
20 so that the samples don't get contaminated?  
21 **A. No. It's so he doesn't get contaminated.**  
22 Q. Okay.  
23 **A. He's in -- somebody who might check into one of these**  
24 **places and stay for a day or an evening, he's in these**  
25 **buildings all the time. His exposure to this material**

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1 **is going to be much, much more extensive. So --**  
2 Q. Okay.  
3 **A. -- there are instances when he will also -- we will --**  
4 **we will suit up. We will Tyvek suit up. We'll actually**  
5 **put on air respirators. We had a hotel in Los Angeles**  
6 **that he and I did together where we did full hazmat**  
7 **based on the damage and the asbestos that was in there.**  
8 Q. Any particular reason that either you or Mr. Piero did  
9 not use an air respirator during your visit?  
10 **A. We didn't think that the level of contamination**  
11 **warranted it.**  
12 Q. Okay. Are you aware of any regulations requiring the  
13 use of personal protective equipment for wildfire  
14 cleanup?  
15 **A. Yes.**  
16 Q. And what regulations are those?  
17 **A. You need to be suited up, depending on the extent of the**  
18 **damage. And you may bring in environmental engineering**  
19 **controls. You may have HEPAs running. The -- the issue**  
20 **there is that it is -- it is understood that you will be**  
21 **likely doing some destructive work. So you will be**  
22 **aerosolizing the materials, which I found interesting in**  
23 **Medina, for example, a couple of his sample locations**  
24 **attempted to reenergize inside CMU blocks by blowing air**  
25 **into that. His samples were occluded with too much**

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1 material, which I -- I thought would have happened. We  
2 tried that in the past and don't do that.  
3 Here we're walking into an area where we're not --  
4 it's not a construction site. You're not knocking over  
5 walls. You're not aerosolizing dust and those kinds of  
6 things. So that protocol has been put in place by OSHA,  
7 I believe.  
8 Q. Okay.  
9 A. Yeah.  
10 Q. So is that an OSHA protocol that applies when one would  
11 expect whatever debris is there to be -- to be  
12 resuspended in the air?  
13 A. Yes.  
14 Q. Okay.  
15 A. Yep. This -- as I said before, the site down in  
16 Birmingham, Alabama, which is undergoing remediation, if  
17 you walk down to that site like I did last week, you  
18 would see each level is -- there are three different  
19 door systems that you have to walk through. There are  
20 HEPAs running and everybody is wearing PPE and Tyvek  
21 suits --  
22 Q. Okay.  
23 A. -- during the remediation. That's a fairly extensive  
24 one.  
25 Q. Do you know what that OSHA regulation is?

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1 A. We cite it generally in our overall reports, but, no, I  
2 don't have the number on it.  
3 Q. Okay. Are you aware of any published studies  
4 correlating soot levels with adverse human health  
5 effects?  
6 A. There are some studies that have been put out by various  
7 firefighter organizations that we reference linking  
8 cancer to the likely -- and I use that in air quotes --  
9 exposure to fire particulate, including soot. The issue  
10 really becomes particle size, and I -- I think we  
11 actually reference -- do we reference that in here, in  
12 this report? We do. We reference something from the  
13 International Agency of Research on Cancer, IARC. Those  
14 studies are -- I guess I would put it in much like  
15 asbestos. We're in the infancy stage of a lot of this  
16 research. The studies are now all of a sudden -- you go  
17 back five years ago, there was one. Now there's 15.  
18 Exponentially this is being looked at as a major issue  
19 finally. The problem is right now there are no  
20 thresholds. There are none. We do not know at what  
21 point in time or what the exposure limits should be. So  
22 our position is it's got to go.  
23 Q. Okay. That was my next question --  
24 A. Yeah.  
25 Q. -- is, are there any studies that provide a threshold

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1 level of soot that would cause adverse human health  
2 effects?  
3 A. Were at mold -- we're at where mold was 20 years ago.  
4 All right. So the -- the medical link to that. So we  
5 have to look at what is OSHA recommending. What are the  
6 -- what are the practical kinds of things. Our position  
7 is that -- and honestly it appears to me that Travelers  
8 took this position as well based on their initial  
9 estimate. They're -- they're providing a scope of work  
10 to clean this building. So they must have recognized  
11 that it's an issue. I think the problem is we don't  
12 think Travelers went far enough. They didn't sample.  
13 They didn't -- they didn't literally develop a scope  
14 that was correct. So that's really the -- the issue  
15 here.  
16 Q. Okay. Well, regardless of what Travelers did in this  
17 case, are you aware of any study that sets forth a  
18 threshold level of soot residue related to causing  
19 health issues in humans?  
20 A. No.  
21 Q. Okay.  
22 A. No.  
23 Q. Now, are you -- I'm going to ask the same question  
24 slightly differently. Are you aware of any studies  
25 establishing a threshold level of wildfire debris that

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1 causes adverse health effects in humans?  
2 A. No.  
3 Q. Okay.  
4 A. There are anecdotal references, but there is no -- there  
5 is no defined recognized peer reviewed study that I am  
6 aware of.  
7 Q. So you brought up mold. You made -- and if I misquote  
8 you, let me know, but I think you made this statement  
9 that we are kind of where we were with mold 20 years  
10 ago. Are you talking about in terms of the progress of  
11 the studies on the issue?  
12 A. That's what I mean, yeah.  
13 Q. Okay.  
14 A. I mean we know that -- let's take aspergillus,  
15 penicillium. There's four of us in the room. You may  
16 react at 1,500 colony-forming units and our videographer  
17 might react at 100,000 colony-forming units in the same  
18 room. So how do you define in that situation? So then  
19 the practice has been then you -- you clean to the  
20 lowest threshold --  
21 Q. Okay.  
22 A. -- of exposure because you do not know who --  
23 particularly in a hotel, you don't know who's coming in  
24 that room the next week or the next day. It could be  
25 somebody on a respirator. It could be somebody who's

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1 had a liver transplant. I mean we know that through the  
2 mold studies and the work that we've done with that, we  
3 know that there are at-risk populations that have been  
4 identified. That hasn't been done yet either, but I --  
5 most likely somebody's working on that. I don't know.  
6 Q. You say that hasn't been done yet either. You mean with  
7 respect to soot levels?  
8 **A. Correct.**  
9 Q. Okay. So is there a generally accepted threshold level  
10 of mold contamination that warrants a cleanup?  
11 **A. The general accepted practice is to take an ambient**  
12 **sample on the exterior of the building, at least one,**  
13 **sometimes two, to compare the species of mold that are**  
14 **found on the interior of the building to make sure that**  
15 **you have exactly the same species. So, if on the**  
16 **exterior I don't get Stachybotrys, but on the interior I**  
17 **do, that's a concern. Okay. Because I should have the**  
18 **same. And then the levels of colony-forming units**  
19 **should be less than the exterior on the interior**  
20 **samples. So, if I get cladosporium on the exterior,**  
21 **which is a common mold you find everywhere, and I have**  
22 **100,000 colony forming units and on the interior in**  
23 **certain locations I get a million, that's a concern.**  
24 **Why do I have such a high spike? That's probably a**  
25 **water related issue that's causing that. Let's figure**

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1 it out. So that has not been done yet with soot and  
2 char.  
3 Q. But is there -- is there a generally accepted level of  
4 mold particulates that causes adverse health effects in  
5 humans?  
6 **A. Mold?**  
7 Q. Yeah.  
8 **A. Depends on the individual.**  
9 Q. Yeah.  
10 **A. Totally depends on the individual.**  
11 Q. Is there --  
12 **A. So --**  
13 Q. If I understand your previous answer that --  
14 **A. And let me just, if I can, back up. So -- so in the --**  
15 **in the fungal meningitis case, I mean people were being**  
16 **injected with Exophiala, which is a mold that had never**  
17 **ever showed up in the literature before. So it's a**  
18 **dynamic process --**  
19 Q. Sure.  
20 **A. -- with all of this stuff. Yeah.**  
21 Q. Okay. In the mold testing you described earlier, you're  
22 comparing exterior samples to interior samples, correct?  
23 **A. Yes. Ambient.**  
24 Q. Okay. And if you saw an elevated particular strain of  
25 mold on the interior as compared to the exterior, it

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1 would be a sign that there was an issue in the building,  
2 correct?  
3 **A. Yes.**  
4 Q. All right.  
5 **A. Typically that would be a sign.**  
6 Q. Is there a particular level of interior mold that, you  
7 know, without regard to how it compares to the exterior  
8 levels, would -- would warrant a remediation?  
9 **A. Well, the general -- the general accepted practice is,**  
10 **number one, if you can see it, get rid of it. Okay. If**  
11 **you can visually identify what you think is mold and you**  
12 **can actually see the hyphae, which so you know it's mold**  
13 **and not just a black spot, get rid of it. The -- the**  
14 **secondary piece of that is figuring out why it -- why it**  
15 **came. Just because you get rid of it, doesn't mean that**  
16 **it won't come back.**  
17 Q. Mm-hmm.  
18 **A. So what -- we need -- it's turning into a mold**  
19 **discussion. We need water. We need a food source and**  
20 **we need the right temperature for mold. Those three**  
21 **things. So typically the process is you can't eliminate**  
22 **the food source and you can't eliminate temperature. So**  
23 **get rid of the water. Keep it dry. You're not going to**  
24 **have a problem.**  
25 **What you're asking me is, is there an accepted**

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1 level. It depends on the individual and it depends on  
2 the type of mold. We know that there are some  
3 identifiable molds that are very concerning; Chaetomium,  
4 Fusarium, aspergillus, penicillium that is in chains,  
5 which means that it's an active mold, and Stachybotrys.  
6 Those are four that we get very, very concerned about  
7 that we wouldn't typically see in the interior  
8 environment. So those are the markers that at least we  
9 look for.  
10 Q. Okay. All right. Let's talk about the -- I just want  
11 to start with the -- the Days Inn. In general terms,  
12 that building has room spaces and it has an attic space  
13 above those room spaces, correct?  
14 **A. Yes.**  
15 Q. Okay. Does the air in the attic connect with the air in  
16 the rooms?  
17 **A. Yes.**  
18 Q. How so?  
19 **A. It's an open bypass system. Any -- any hole, any -- any**  
20 **opening that you have, any wire, any chaseway, any of**  
21 **those kinds of things is going to create an open bypass.**  
22 **So, under the definitions in the fire code, it is what**  
23 **is called an open atmosphere building.**  
24 Q. Okay.  
25 **A. So air moves freely from one part of the building to the**

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1 **other part. Any fire stopping that is in place is**  
2 **designed to stop fire. It does not stop air movement.**  
3 Q. Okay. So just, as an example, in the room we're sitting  
4 in here, we have a number of recessed lights in the  
5 ceiling. If I'm understanding you, that the air from  
6 this room might connect to some attic space through gaps  
7 around those recessed lights as an example?  
8 **A. Well, and, more importantly, behind you is an outlet in**  
9 **the wall. There's an opening right there behind that**  
10 **fire alarm. The -- that wall, one of two things is**  
11 **going to happen with that wall. That wall is going to**  
12 **go all the way up to the floor and it's going to create**  
13 **a firewall, or it's going to stop just above the**  
14 **ceiling. And so I might pop my ceiling -- my head here,**  
15 **and I may be able to look all the way out, past the**  
16 **doors of this office, down into the next office and down**  
17 **into the hallway. So, if in fact I have a fire in this**  
18 **room, it is because it's -- if it's an open atmosphere,**  
19 **there's a very good chance that my particulate would**  
20 **spread throughout the entire building.**  
21 Q. Okay. Are -- is the attic vented into the -- into the  
22 rooms?  
23 **A. No.**  
24 Q. Okay. My understanding is that each room has its own  
25 wall HVAC unit; is that correct?

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1 **A. Yeah. It's called a PTAC unit through the -- through**  
2 **the exterior.**  
3 Q. And that's a -- that's like a wall air-conditioner that  
4 separates the interior from the exterior through the  
5 wall, right?  
6 **A. Yeah. And these are actually heat pumps. They serve as**  
7 **both the air-conditioner and the heater.**  
8 Q. Okay. Is there any sort of central air-conditioning  
9 system at either of these hotels?  
10 **A. No. I do not believe so.**  
11 Q. And we were talking about Days Inn. Is Rocky Waters  
12 Motor Inn also an open atmosphere building?  
13 **A. Yes.**  
14 Q. Okay. And that also has an attic space?  
15 **A. Yes, it does.**  
16 Q. Do you have an opinion on the actual probability that  
17 wildfire debris in the attic space could resuspend in  
18 the air?  
19 **A. Yes.**  
20 Q. And what is that?  
21 **A. Absolutely.**  
22 Q. Okay. How would that happen?  
23 **A. Well, first of all, with regard to soot and char as**  
24 **well, we know that if the elemental makeup of that has**  
25 **certain elements in it, it will -- it will have an**

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1 **electrical charge to it. And as a result of the fire,**  
2 **what happens is, as it's being distributed, it looks for**  
3 **the coolest surface it can find to bond to. It**  
4 **literally bonds to that surface. That's why when we**  
5 **tape lift it we can find it on that surface.**  
6 **What we have found through our studies is that when**  
7 **there is a change in due point or vapor drive within the**  
8 **building, which occurs when it gets humid outside, all**  
9 **right, or a temperature inversion of some kind, that**  
10 **material actually debonds and aerosolizes by itself.**  
11 **That's why you hear from consumers typically six months**  
12 **after they remediated my house, I go in, and all of a**  
13 **sudden I'm smelling smoke. Well, the correlation**  
14 **between that is when you look at the weather there was a**  
15 **spike in humidity outside. That aerosolized that**  
16 **material. That's -- that's the issue. So...**  
17 Q. Are you aware of any specific complaints of smoke odors  
18 from occupants in either the Rocky Waters Motor Inn or  
19 the Days Inn?  
20 **A. I've not reviewed any -- any documents to that effect.**  
21 Q. Okay.  
22 **A. Well, and, if I can, I think one of the -- one of the**  
23 **misconceptions is, is that -- and this is changing. But**  
24 **one of the misconceptions is that you -- that the two**  
25 **benchmarks for determining if there's damage is, one, if**

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1 **you've got -- I need to see it, and, two, I need to**  
2 **smell it.**  
3 Q. Sure.  
4 **A. And that's changing based on the sampling that's being**  
5 **done and the -- the research that's being done.**  
6 Q. When you visited the Rocky Waters Motor Inn and the Days  
7 Inn, could you detect any smoke odors?  
8 **A. No, I did not. I know that they've cleaned. I mean I**  
9 **know --**  
10 Q. Sure.  
11 **A. -- they wiped everything down. So...**  
12 Q. When you visited these hotels, did you go up in the  
13 attic?  
14 **A. I did not in either case. They had already. Our guys**  
15 **had already done that. They photographed it. I -- what**  
16 **I look for when I'm there is I'm really looking at these**  
17 **from a building science standpoint. That's one of the**  
18 **concerns that I have with hygienists doing this type of**  
19 **work. Hygienists typically don't understand building**  
20 **science and air movement and building codes. So I'm**  
21 **looking at this from the standpoint, as I talked about**  
22 **in this office, is it possible for particulate from this**  
23 **room to transfer to the next room or the next room, and,**  
24 **if so, how. What is the mechanism for that**  
25 **distribution. And that's really -- that was really our**

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1     **focus on this, was to figure out that distribution.**  
2     Q. Did you do any studies of the airflow through the  
3     building?  
4     **A. No. We didn't do any blower door tests or**  
5     **depressurization of the building. Both of these**  
6     **buildings are old enough, it would have been difficult.**  
7     **There's a lot of open bypasses. Yeah.**  
8     Q. Do you know how many cubic feet of air circulate through  
9     the attic on any given date?  
10    **A. No. That would also be dependant on the -- on the**  
11    **amount of wind that's going on.**  
12    Q. Did you --  
13    **A. I mean we could do a -- we did not do an analysis of the**  
14    **-- a code analysis of the venting. There are formulas**  
15    **where you can determine, based on the size of the strip**  
16    **of venting that's in the soffit, any roof vents that**  
17    **there are and any gable end vents, and you can determine**  
18    **the cubic feet of attic space, and you can determine**  
19    **what the airflow is designed for, but that is dynamic**  
20    **based on wind. Yeah.**  
21    Q. Okay. Did you do any study of the -- how many cubic  
22    feet of airflow through the wall cavities in a given  
23    day?  
24    **A. We did not.**  
25    Q. Do you know if Gatlinburg is EPA compliant in terms of

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1     in the report that we've marked as Exhibit 2.  
2     **A. Sure.**  
3     Q. First of all, this is a true and correct copy of your  
4     report as to the Rocky Waters Motor Inn, correct?  
5     **A. Yes.**  
6     Q. And it was Mr. Piero who pulled the samples, right?  
7     **A. He did, yes.**  
8     Q. And you pulled both tape samples and air samples,  
9     correct?  
10    **A. Yes.**  
11    Q. Does one give you an advantage over the other, tape  
12    versus air samples?  
13    **A. Well, the air sample is essentially a tape sample.**  
14    **Inside the Air-O-Cell cassette is a -- is a sticky**  
15    **slide. The difference really with the air sample is**  
16    **we're trying to get an overview of ambient air within an**  
17    **area, or, when we can't get the tape into the -- the**  
18    **block wall, for example, or we can't get the tape up**  
19    **into a piece of conduit, we use something called a wall**  
20    **check sterilized tube to do that, an extension that goes**  
21    **onto that Air-O-Cell. So the -- both -- both are**  
22    **certainly used in the industry as a -- as a pretty**  
23    **standard practice.**  
24    Q. Okay.  
25    **A. Yeah.**

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1     carbon emissions?  
2     **A. I do not. And I know there are sites that you can look**  
3     **at where you can get daily readings on those, but I do**  
4     **not and I did not look at that.**  
5     Q. Okay. Let's take a look at Exhibit 2 there. That's --  
6     **A. Okay.**  
7     Q. I believe that's your report on the Rocky Waters'  
8     property, correct?  
9     **A. Yes.**  
10    Q. As opposed to the Days Inn?  
11    **A. Yes. And I will -- I will go on record as saying that**  
12    **it does appear that in the -- and you'll get this in the**  
13    **documents, but it does appear that when we reprint with**  
14    **-- embedded in here, we reprint Carlson's report.**  
15    Q. Mm-hmm.  
16    **A. All right?**  
17    Q. Yes.  
18    **A. And we reprinted, as we receive it. However, for**  
19    **whatever reason, in both of these, it does not look like**  
20    **the pictures that Carlson took are there. I don't know**  
21    **if you've seen those. But he has actual pictures of the**  
22    **-- underneath the microscope of what he was seeing. So**  
23    **that -- that appears to not have been reprinted here.**  
24    **So...**  
25    Q. Okay. All right. I want to ask you about some things

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1     Q. Is it true that tape lift sampling would give you a  
2     better indication of the density of particulate matter?  
3     **A. Yes. Typically we will see the tape lifts will have a**  
4     **higher distribution count on them than the Air-O-Cell.**  
5     **Yeah.**  
6     Q. And it says the sampling was performed by FBS on  
7     January 4th and 5th of 2018, correct?  
8     **A. Yes.**  
9     Q. It describes it is as a recent brush fire. Do you see  
10    that?  
11    **A. Yes.**  
12    Q. Okay.  
13    **A. I think it was a little more than a brush fire.**  
14    Q. Maybe a little understatement there?  
15    **A. A little understatement.**  
16    Q. Okay.  
17    **A. Yes.**  
18    Q. Suffice to say, at the time you knew you were dealing  
19    with the Gatlinburg wildfires, correct?  
20    **A. Yes.**  
21    Q. Okay. So how long after the actual wildfires was FBS  
22    taking these samples?  
23    **A. A couple years. A year and-a-half.**  
24    Q. Okay.  
25    **A. Yep.**

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1 Q. What are the advantages or disadvantages of taking  
2 samples a year and-a-half after the fact as opposed to  
3 shortly after the event?  
4 **A. Well, as I said before, with the tape lifts, I don't**  
5 **know that it would make a great deal of difference on a**  
6 **vertical surface. Vertical surface. On a horizontal**  
7 **surface where you would have settled dust, it would**  
8 **change the percentage of char or soot as to the total of**  
9 **what you're looking at underneath the microscope because**  
10 **now I've distributed more background dust. With the**  
11 **Air-O-Cell, there's no question it would have an effect**  
12 **on the percentage of soot or char that you would see.**  
13 Q. Would it affect the percentage of soot and char in  
14 relation to each other?  
15 **A. No.**  
16 Q. Okay. In other words, the passage of time would not  
17 affect the proportion of soot and char relative to each  
18 other?  
19 **A. Relative to each other. It just...**  
20 Q. Assuming --  
21 **A. Yeah.**  
22 Q. -- no intervening event.  
23 **A. Assuming no intervening event, exactly. It would not**  
24 **change that. In other words, it doesn't self correct**  
25 **and go away.**

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1 Q. Okay. All right. It says on summary of opinions here,  
2 I have concluded that the property in question located  
3 at 333 Parkway, Gatlinburg, Tennessee 37738 has been  
4 damaged by the brush fire through the deposition of soot  
5 and ash throughout the attic assemblies, interior  
6 partition walls, dropped ceilings, mechanical chase  
7 ways, light fixtures and venting. Do you see that?  
8 **A. Yes.**  
9 Q. Okay. You said soot and ash there. Did anyone test for  
10 the presence of ash?  
11 **A. Carlson always looks for all three of those, and I will**  
12 **stipulate that that's a -- that's a misprint. It should**  
13 **say soot and char. We typically say soot and char or**  
14 **soot/char. We only reference ash if it comes up, and it**  
15 **didn't come up in any of his samples.**  
16 Q. Okay. Do wildfires produce ash?  
17 **A. Certainly. You can walk through where the wildfire is**  
18 **and you can kick it up. Typically the ash is going to**  
19 **be a white or gray in color. Although, now the**  
20 **literature being published is indicating that now soot**  
21 **is being identified as that same color. So...**  
22 Q. Did Mr. Carlson test for ash?  
23 **A. You'll have to ask him that question.**  
24 Q. Okay.  
25 **A. I believe he looks for fire related particulate.**

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1 Q. Okay.  
2 **A. So...**  
3 Q. And I will ask him that question. You'd agree with me  
4 though that his report does not reference ash?  
5 **A. I would agree with that.**  
6 Q. You say, it is my opinion that the brush fire caused  
7 damage to the building through the deposition of  
8 carcinogenic soot into hidden wall and ceiling cavities.  
9 Do you see that?  
10 **A. Yes.**  
11 Q. Actually, let me ask you this. Does -- does the amount  
12 of wildfire debris that you believe is present at these  
13 hotels, does it cause any structural or material change  
14 to the -- to the surfaces on which it sits?  
15 **A. The only structural change that we have seen this**  
16 **product, these byproducts cause over time is we have --**  
17 **we have seen the electrical -- the casing on electrical**  
18 **wire, we have seen that develop splits.**  
19 Q. Okay.  
20 **A. And we've been lucky enough to do sampling and have**  
21 **cases still going on two to three years later and no**  
22 **work being done and go back and relook at things and**  
23 **pull wire and take close-ups, and it's -- it's pretty**  
24 **scary actually about what's happening inside the**  
25 **conduit --**

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1 Q. Okay.  
2 **A. -- of some of these buildings later.**  
3 Q. Are you aware of whether anyone's performed any  
4 inspection or examination of the electrical conduits in  
5 either hotel at issue here?  
6 **A. They have not. We took tape lifts from the electrical**  
7 **in, I think, a couple of locations.**  
8 Q. Okay.  
9 **A. Should be in the photos. And all we're doing there is**  
10 **we're taking a -- we're taking a junction box cover off**  
11 **and we're just taking a tape lift off the actual wire**  
12 **itself.**  
13 Q. Okay. Do you ever use any laboratory other than N.G.  
14 Carlson Analytical for Level 1 testing?  
15 **A. No.**  
16 Q. Okay. The next page lists the -- it starts a table  
17 there of Mr. Carlson's observations, correct?  
18 **A. Yes.**  
19 Q. And these are Mr. Carlson's observations from looking at  
20 the samples under a microscope, correct?  
21 **A. Correct.**  
22 Q. And there is a column there that says Trace density. Do  
23 you see that?  
24 **A. Yes.**  
25 Q. A column that says Location, right?



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1     **A. Yes.**  
2     Q. And, obviously, the location column shows where the  
3         sample came from, right?  
4     **A. Yes.**  
5     Q. And how is trace density determined, if you know?  
6     **A. The -- my understanding -- and obviously you will ask**  
7         **him this. But my understanding, when you take a look at**  
8         **the D6603 ASTM standard, on about the ninth or tenth**  
9         **page of that, it shows a diagram of -- of some circles,**  
10        **and inside the circles it shows a bunch of dots and some**  
11        **are white and some are black. And then it shows another**  
12        **one with more black and less white until it's, you know,**  
13        **a lot of black and a few white. That is a trace density**  
14        **sample. A person looking at it is mathematically saying**  
15        **within the field that I am looking at, this small little**  
16        **field, this is the percentage of what I am seeing in**  
17        **there that I think is related to a fire particulate.**  
18        **All right?**  
19     Q. Okay. So, under the first table there on page 3,  
20         there's a -- you see where it says char and soot-like  
21         particle interpretation?  
22     **A. Yes.**  
23     Q. Okay. Is that the same thing as the ASTM classification  
24         standard?  
25     **A. In essence.**

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1     Q. Okay.  
2     **A. Yeah.**  
3     Q. What do you mean in essence?  
4     **A. Well, what Carlson has come up with to determine -- and**  
5         **again you'll have to ask him.**  
6     Q. Okay.  
7     **A. But we needed to -- when we delved into this process**  
8         **about seven years with him, we did a number of case**  
9         **studies before we ever decided to utilize it in the**  
10        **field. We sampled all different types of wood burns.**  
11        **We sampled different buildings, brand new construction,**  
12        **areas where we wouldn't ideally find any soot. We**  
13        **sampled things that have been damaged by fires. We had**  
14        **to then figure out and he had to figure out how am I**  
15        **going to quantify that so someone could interpret it and**  
16        **understand it. And this is the interpretation method he**  
17        **has come up with.**  
18     Q. Okay. So --  
19     **A. All right. That is -- in discussing this with him, my**  
20         **understanding is that is based on standard industrial**  
21         **hygiene principles for quantifying particulate, whether**  
22         **that would be mold or whether that would be soot.**  
23     Q. Okay. Just, for example then, taking the first entry  
24         there, Room 102, bedroom exterior wall.  
25     **A. Yes.**

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1     Q. Trace density is listed as light. Do you see that?  
2     **A. Yes.**  
3     Q. The table below lists -- it doesn't say light. It says  
4         limited or it says negligible.  
5     **A. Negligible impact for smoke. Exactly.**  
6     Q. Okay.  
7     **A. So --**  
8     Q. Do you know why the term light is used as opposed to  
9         negligible?  
10    **A. The trace density -- and just a second, if I can. So**  
11        **just a minute. You'll have to ask him this again.**  
12    Q. Sure.  
13    **A. He can answer that question. But my understanding is**  
14        **the trace density has to do with how much particulate is**  
15        **on the actual sample. Is it -- so we will take a tape**  
16        **lift or an Air-O-Cell. We will take an Air-O-Cell**  
17        **sometimes, and you can pick up the Air-O-Cell, and you**  
18        **can look, and you don't see anything in there most of**  
19        **the time. There are times we'll take it and the**  
20        **Air-O-Cell is actually black. Okay. So he may say**  
21        **that's a very heavy trace density. All right. But**  
22        **within the actual -- when he actually looks at it, he**  
23        **may have less than 5 percent char, .05 percent char or**  
24        **and no soot. Meaning, yeah, it's a heavy trace density**  
25        **of particulate, but there's no fire particle in there**

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1        **that he can see.**  
2     Q. Okay.  
3     **A. That's my understanding.**  
4     Q. If you look at --  
5         MR. SCOTT: Brian?  
6         MR. DEVILLING: Yeah, Clint.  
7         MR. SCOTT: Are we at a place we can take a  
8         five-minute break?  
9         MR. DEVILLING: Always.  
10        THE WITNESS: Great.  
11        MR. SCOTT: Ten, 15 come back?  
12        MR. DEVILLING: Sure.  
13        THE WITNESS: Sounds good.  
14        MR. DEVILLING: Sounds good.  
15        THE VIDEOGRAPHER: And we are going off the  
16        record, and the time is 10:45 a.m.  
17        (Break taken at 10:45 a.m. - 10:53 a.m.)  
18        THE VIDEOGRAPHER: We are back on the  
19        record, and the time is 10:53 a.m.  
20     Q. (MR. DEVILLING) Okay. Looking at Exhibit 2, on page 3,  
21         in the bottom there where it lists the tape samples, do  
22         you see that?  
23     **A. Yes.**  
24     Q. And it looks like you took a tape sample from Room 102,  
25         in the wood burning fireplace, correct?



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1     **A. Yes.**  
2     Q. What was the purpose of taking a tape sample from the  
3         wood burning fireplace?  
4     **A. The idea, that was done for purposes of secondary lab**  
5         **analysis and some initial lab analysis, if Mr. Carlson**  
6         **wanted to look at the morphology of the sample within**  
7         **the fireplace itself versus the morphology of a sample**  
8         **that was taken somewhere else like up in the attic or**  
9         **something like that.**  
10    Q. Okay.  
11    **A. Had we taken this then to a secondary lab for elemental**  
12         **analysis, what we would have done with that is, one,**  
13         **confirm that it's, you know, soot and char, but then we**  
14         **would have had the -- anywhere from 6 to 12 actual**  
15         **markers that were within that particular sample. And**  
16         **then we would have compared it to, say, for example,**  
17         **number 18 where we have a distribution of char,**  
18         **certainly not as high. But we could compare those two**  
19         **samples, and, if we had the same or different elements,**  
20         **then we would have been able to say there's six elements**  
21         **in number 12. There's nine elements in number 18.**  
22         **Those three additional markers are consistent with**  
23         **something you would see from a wildfire, not from a**  
24         **fireplace.**  
25    Q. Okay.

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1     **A. We didn't do that.**  
2     Q. Okay. And, likewise, if you would see the same sort of  
3         elemental fingerprint in both samples, that might be an  
4         indication that the stuff in the attic came from the  
5         fireplace?  
6     **A. Exactly.**  
7     Q. Okay.  
8     **A. Yeah.**  
9     Q. If you look at Exhibit 3, page 3.  
10    **A. Exhibit 3. We're going to switch exhibits.**  
11    Q. Yeah.  
12    **A. Okay.**  
13    Q. That's the Days Inn report, correct?  
14    **A. Yes.**  
15    Q. And it looks like there was a sample taken from a wood  
16         burning fireplace in Room 407, correct?  
17    **A. Yes.**  
18    Q. And that one showed charred particles of 50 plus,  
19         correct?  
20    **A. Yes.**  
21    Q. And by the way, the number of particles, are those just  
22         individual particles?  
23    **A. Yes. He's counting on the -- just like you do with --**  
24         **with mold, and you can again ask him this, but what he's**  
25         **doing is he's doing a -- a count of how many particles**

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1     **is he seeing. And he -- at plus he stops. He's**  
2         **basically saying there's -- there's clearly more than**  
3         **that here, but this is -- but this is going to be a**  
4         **fairly loaded sample.**  
5     Q. Okay. Do you have any explanation for why there was  
6         soot of 50 plus in the fireplace at the Rocky Waters  
7         Motor Inn but no soot in the fireplace at the Days Inn,  
8         Gatlinburg?  
9     **A. No, I do not.**  
10    Q. Okay. Any explanation for why --  
11    **A. Well, let me -- it could be where Adam took the sample.**  
12    Q. Okay.  
13    **A. Potentially. But, no, that -- that's all I can think**  
14         **of.**  
15    Q. Okay.  
16    **A. Yeah.**  
17    Q. Do you know what explains the difference though?  
18    **A. In this case, no, not without a deeper level of**  
19         **examination from the lab.**  
20    Q. Okay. Similar question, do you know why there's a  
21         difference in the proportion of char to soot between the  
22         Days Inn and the Rocky Waters Motor Inn fireplaces that  
23         were tested?  
24    **A. No. We didn't draw that correlation.**  
25    Q. Okay. Let's go back to Exhibit 2 here. What I'd like

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1     to do is just run down the sample locations and ask you  
2         why each particular location was -- was chosen.  
3     **A. Sure.**  
4     Q. Okay. So starting with the Room 102, bedroom exterior  
5         (LE) wall. Do you see that?  
6     **A. And this is back to --**  
7     Q. Exhibit --  
8     **A. -- Rocky Waters?**  
9     Q. Yes, sir.  
10    **A. Okay.**  
11    Q. Exhibit 2.  
12    **A. Great.**  
13    Q. Do you know why Room 102, bedroom, exterior wall, was  
14         chosen as a sample location?  
15    **A. Yes. This is -- and LE means left elevation.**  
16    Q. Okay.  
17    **A. So all we're doing is we're going to the left elevation**  
18         **outside and we're taking a sample. We're -- when we say**  
19         **at the wall, we're not -- I'll just take a look. Let me**  
20         **just take a look at his photos on this one. A sample**  
21         **number 1. This is sample number 2. Sample 2. Okay.**  
22         **So, yeah. So that would be memorialized on page 5 of 63**  
23         **on the photo logs behind you.**  
24         **So what he's done is he's popped a hole the size of**  
25         **a pen in this wall right here, and he's putting a**

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1     sterilized tube in there and he's sucking air out of  
2     that wall --  
3     Q. Okay.  
4     **A. -- basically. That's all he's doing. Yeah.**  
5     Q. That was my question. Is the air coming from the wall  
6     cavity or from the outside?  
7     **A. No. It's coming from the actual wall cavity itself. So**  
8     **we assume the wall cavity is 14 inches wide between the**  
9     **studs, which would be standard framing construction. We**  
10    **assume it's three and-a-half inches thick, and we assume**  
11    **that it's eight feet tall.**  
12    Q. Okay.  
13    **A. So we could calculate the amount of cubic air that's in**  
14    **there. However, what we don't know at that point,**  
15    **because we haven't gutted, we don't know if there's a**  
16    **wire hole through the top, if there's wire. We don't**  
17    **know if it's interconnected. We know nothing about that**  
18    **wall in terms of its assembly because we haven't gutted**  
19    **it open. So we're literally doing a grab sample in this**  
20    **location to say what's happening at that point in time**  
21    **at that location today.**  
22    Q. So as to the Room 102 bedroom exterior, left elevation  
23    wall, do you know if that wall cavity was exposed to the  
24    wildfire debris?  
25    **A. Well, the exterior of the building certainly was. So,**

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1     **wall for wiring or anything else.**  
2     Q. Do you know if there was any insulation in there just  
3     for noise purposes?  
4     **A. There wasn't, and I can tell you that based on the --**  
5     **the 30 liters that we took. So, as soon as we drill**  
6     **that hole, you can look at the end of that, and, if**  
7     **there's insulation on the end of it, then we run our**  
8     **Air-O-Cell cassettes for one minute.**  
9     Q. Okay.  
10    **A. This is indicating a five-minute sample. Okay. So much**  
11    **-- much longer sample. There's no -- no insulation in**  
12    **there.**  
13    Q. Do you know whether the wall cavity that was tested  
14    there at Room 104 was sealed from other wall cavities?  
15    **A. We do not.**  
16    Q. Do you know if it was sealed off from the attic?  
17    **A. We do not.**  
18    Q. How about Room 105, bathroom, dropped ceiling?  
19    **A. So in this particular hotel they have the Sheetrock**  
20    **ceilings in the main rooms, and then it drops down about**  
21    **four feet inside the room to a suspended ceiling that**  
22    **goes across the outside hallway and goes across then**  
23    **into the other unit across the hall. And so you have,**  
24    **going down the middle of the -- the whole area, you have**  
25    **the attic and then you have this plenum or dropped area,**

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1     **if there is any opening in that wall or if it is -- if**  
2     **it connects internally to any of the other wall**  
3     **assemblies, then it could potentially have exposure.**  
4     Q. Okay.  
5     **A. Yeah.**  
6     Q. And it sounds like we would need to gut the wall to get  
7     a final --  
8     **A. Correct.**  
9     Q. -- determination on that. All right.  
10    So Room 104, bathroom vanity, interior dividing wall  
11    is the next sample. Why was that location chosen?  
12    **A. This was a partition wall and it was chosen in**  
13    **particular because it extends up to the -- so -- so**  
14    **here's a -- here's a building. Here's a unit, here's a**  
15    **unit. Okay. You have a partition wall between the two**  
16    **units. So it is a common wall, just like this wall here**  
17    **is a common wall, that wall there is a common wall. So**  
18    **there's no insulation in it. It has some outlets and**  
19    **things in it and it extends up to the ceiling. What we**  
20    **don't know at that point in time, when we're doing this,**  
21    **is if we remove the insulation, is there a plate, is it**  
22    **open. Typically that wall would have a plate on top of**  
23    **it so it would be sealed.**  
24    Q. Okay.  
25    **A. But we don't know again if there's holes through that**

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1     **just like this, below the attic. And that is -- that**  
2     **goes from one end of the hotel to the other. That's**  
3     **completely -- there's no separation of that at all.**  
4     **So --**  
5     Q. That was my next question.  
6     **A. Yeah.**  
7     Q. Is there -- when you say there's no separation at all.  
8     Are you talking about separation between the attic and  
9     the dropped ceiling area?  
10    **A. Correct. No. There's a -- there's a separation between**  
11    **the attic and the dropped ceiling. I'm sorry. But**  
12    **there is no separation between one end of that and the**  
13    **other end of it.**  
14    Q. Okay.  
15    **A. So if I'm in -- if I'm in room -- let's see. Where are**  
16    **we here? If I'm in Room 105 and there's a room across**  
17    **the hall from me or there's a room here, okay, all of**  
18    **that is connected. So anything that's happening in here**  
19    **would happen here or here or here.**  
20    Q. Okay. And is the drop ceiling area vented?  
21    **A. Well, it's got -- it's got vents running through it**  
22    **because it's the bathroom. So you have bathroom vents**  
23    **that are running through. They're running up into the**  
24    **attic. We did not see any evidence of fire caulking or**  
25    **any of those kinds of things around any of these**

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1 penetrations that went up into the attic. They were all  
2 open bypasses.  
3 Q. Okay.  
4 **A. So air would move and distribute easily back and forth**  
5 **between the attic and this area.**  
6 Q. How about Room 114, bedroom? That's sample number 5.  
7 **A. Bedroom, east wall.**  
8 Q. Why was that location chosen?  
9 **A. Again, just what we tried to do is we tried to skip, we**  
10 **tried to just randomly pick different rooms. We're just**  
11 **looking for a distribution pattern.**  
12 Q. How about -- well, were any of the remaining locations  
13 in samples 6, 7, 8, 9, 10, 11, 13, 14 or 17 chosen for  
14 any purpose other than just finding random areas to test  
15 in?  
16 **A. Well, 13 was because within the drop ceiling area, when**  
17 **we opened it up, we saw the CMU wall there. We saw that**  
18 **the CMU wall had openings into it and that it went up**  
19 **into the attic and that it's open at the top. So**  
20 **anything in the attic is going to dump into that CMU**  
21 **wall. So we tested in that CMU wall specifically to see**  
22 **what was going on. The difference between our test and**  
23 **this sample 13 is not -- and I don't have their file in**  
24 **front of me, but it's not necessarily the same location**  
25 **that Medina tried to sample inside the wall. The**

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1 fiberglass insulation in it. So two different types of  
2 insulation.  
3 Q. There's a note here in the fourth column on some of  
4 these where it says, Light Asp/Pen --  
5 **A. Yes.**  
6 Q. -- like. Asp/Pen like. What is that notation?  
7 **A. Aspergillus, penicillium. So that's where Carlson is**  
8 **saying, again, I identified four concerning molds,**  
9 **aspergillus, penicillium being one of them. He's just**  
10 **saying, oh, by the way, I'm also seeing a light**  
11 **distribution of aspergillus -- aspergillus, penicillium.**  
12 Q. Okay. And that would -- that would have no relationship  
13 whatsoever to wildfire?  
14 **A. No. The only reason this would pop up is if somebody**  
15 **were spraying water on the building to try and douse it**  
16 **down, to keep it from burning. Okay. That might be a**  
17 **possibility.**  
18 Q. Okay. Oh, and, by the way, I meant to ask you earlier,  
19 in either of these buildings did you see any evidence of  
20 direct fire damage as opposed to just smoke residue  
21 damage?  
22 **A. No.**  
23 Q. Okay. What did you know about the cleaning that had  
24 been done at the hotel prior to the air sampling that  
25 FBS did on January 4th and 5th of 2018?

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1 difference is he took an air hose and he tried to create  
2 an aggressive ambient sample inside there, with results  
3 that couldn't be read by the lab. We just put the hose  
4 in there and pulled out the particulate.  
5 Q. Okay. Without -- without -- for lack of a better term,  
6 without stirring it up?  
7 **A. Exactly. Without mixing it up and stirring it up, and**  
8 **we got a pretty high reading. So that told us that**  
9 **there was some stuff being distributed down in there.**  
10 **And the attic spaces were simply one side of the attic**  
11 **and the other side of the attic.**  
12 Q. Okay.  
13 **A. All right. Or one in the middle, one halfway down that.**  
14 Q. Was the attic accessed through, you know, from  
15 underneath, through the ceiling, or did you go up in the  
16 attic?  
17 **A. There's a side door.**  
18 Q. All right.  
19 **A. I believe on the side of the building, an access panel.**  
20 **Just a second. I got to remember it. Because one of**  
21 **the attics had -- yeah, it's a side door. So that would**  
22 **be page 57, Figure 114, attic space entry. And there's**  
23 **one for each building. One of the attic assemblies had**  
24 **a product called InsulSafe 3 insulation that had been**  
25 **blown in. And the other attic had a fiberglass, red**

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1 **A. My understanding is is that they pressure washed the**  
2 **outside of the building. May have pressure washed it.**  
3 **That's what we were told. My understanding was that**  
4 **they had staff wipe down and vacuum and clean, actually**  
5 **deep clean all of the carpets. They replaced -- I think**  
6 **this is the hotel. Maybe it was both. They replaced**  
7 **some mattresses. I don't know how many. Washed all of**  
8 **the bedding, but it was pretty much a surface wipe-down**  
9 **of the visible surfaces that they could see.**  
10 **Our -- our position is is that the surface -- this**  
11 **wall right over here to my right, I can see a visible**  
12 **surface. There's also a surface behind that, which is**  
13 **the one you can't see. So none of those surfaces were**  
14 **wiped or cleaned because they couldn't access them.**  
15 Q. Okay.  
16 **A. The attic insulation, I believe, is the same insulation**  
17 **that was there at the time of the fire.**  
18 Q. Are you --  
19 **A. The only -- if I can, the only anomaly there was that**  
20 **one building had the pink insulation and one had the**  
21 **white insulation. So at some point in time there was a**  
22 **different insulation that was put in there, but I don't**  
23 **know when.**  
24 Q. Are you aware of whether a professional cleaning service  
25 or a professional restoration company was ever used at

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1 either of these hotels?

2 **A. I'm not aware of that.**

3 Q. All right. So back -- let's go to the tape samples

4 there on Exhibit 2. We already talked about the wood

5 burning fireplace.

6 **A. Yes.**

7 Q. It looks like sample number 12 was another tape lift

8 from a wood burning fireplace, correct?

9 **A. Yes.**

10 Q. Same reason that -- for selecting that location?

11 **A. Yes. We have done enough -- we have done enough of this**

12 **that we know whenever there is a wood burning fireplace**

13 **of any kind at a facility or a house that has had a**

14 **fire, one of the arguments that is always put forth,**

15 **which would makes sense, is that anything you're finding**

16 **is from the wood fireplace. So you have to sample that**

17 **fireplace as a -- as a baseline for comparisons.**

18 Q. All right. And then we've got three tape samples taken

19 from attic spaces, correct?

20 **A. Yes.**

21 Q. Okay. Any particular reason for selection of the attic

22 spaces?

23 **A. Basically start at one end, go to the middle, go to the**

24 **other end. Just here's the distribution.**

25 Q. Okay.

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1 **A. You know.**

2 Q. Did you take any tape samples from any surfaces inside

3 rooms, other than the fireplaces?

4 **A. No.**

5 Q. Why not?

6 **A. The rooms had been thoroughly cleaned. What we were**

7 **really looking for is redistribution of particulate that**

8 **had been aerosolized, so that would pick up in the**

9 **ambient air within the rooms.**

10 Q. Okay. All right. You next have the particle

11 interpretation chart. I think we discussed that a

12 little bit. But I do want to ask you, I see a reference

13 to 400 times magnification, correct?

14 **A. Yes.**

15 Q. Do you know what -- actually it says methods down here.

16 It says the Air-O-Cell cassette traces were identified

17 under light microscopy viewed at 100 times, 200 times

18 and 400 times, correct?

19 **A. Yes.**

20 Q. The particle counts that we're seeing in the chart, --

21 **A. Yes.**

22 Q. -- do you know if those are particles that are counted

23 within the 100 times, 200 times or 400 times

24 magnification field?

25 **A. I do not. You'll have to ask Mr. Carlson that.**

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1 Q. Okay. And this might be a better question for

2 Mr. Carlson. But do you know the surface area that's

3 actually examined under a microscope?

4 **A. I do, but I can't recall.**

5 Q. Okay.

6 **A. And I think the issue there is -- and it's interesting**

7 **because the -- you're looking at a slide. All right.**

8 **But you're honing in on a section of that slide, and**

9 **you're moving that slide around basically. You're**

10 **looking at various fields, and so what I can't answer**

11 **for you is that field study that he did. He'll have to**

12 **answer that for you.**

13 Q. Okay.

14 **A. How is that determined. Is this representative of the**

15 **entire slide, for example.**

16 Q. Mm-hmm. Do you know what -- how many square millimeters

17 there are in the adhesive portions of the tape that you

18 used or that Mr. Piero used?

19 **A. Yeah. Well, the tape is half inch Scotch clear tape,**

20 **and he typically -- I mean you can see it in the photos.**

21 **We typically tear off a piece about five inches long.**

22 **We fold over an area for holding, and then we basically**

23 **lay it on there and pull it up. So you would be**

24 **half-inch by three-inch would be the area.**

25 Q. Okay .

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1 **A. And not all of that necessarily. And we don't --**

2 **contrary to -- I read a -- one -- one of the reports**

3 **that was issued for Travelers, a rebuttal report, they**

4 **intimate that we, you know, pressed down on the tape.**

5 **We didn't do that. One of the problems with pressing**

6 **physically down is that you will actually squash the**

7 **particulate and it will take on a different form. So**

8 **it's literally a grab essentially. Whatever is coming**

9 **up on there is coming up.**

10 Q. Okay.

11 **A. All right. So...**

12 Q. Just let gravity do its work, rather than applying any

13 extra pressure?

14 **A. Correct.**

15 Q. Okay. But the surface area though that Mr. Carlson

16 would have available to him would probably be about a

17 half-inch by three inches, correct?

18 **A. Yeah. Take a look at the photo log, page 4, Figure 7.**

19 **There it is, right there. So --**

20 Q. Okay.

21 **A. -- that's about a three-inch long strip, half-inch wide.**

22 Q. And that's a picture of a sample being taken from where?

23 **A. Inside the fireplace.**

24 Q. Okay.

25 **A. Yeah. That sample is being taken with the idea that we**

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1 **are expecting that to register char and/or soot or both.**  
2 Q. Under methods here on page 4, it says, no chemical  
3 identification was conducted on the soot-like, char-like  
4 particles, and carbon black-like particles.  
5 Is that basically what we've been talking about is  
6 the difference between the Level 1 and the Level 4 lab  
7 analysis?  
8 **A. Yes.**  
9 Q. All right. And it says, presumptive identification was  
10 based on particle morphology.  
11 What is your definition of the word morphology?  
12 **A. It's the size of what it looks like under the**  
13 **microscope. Yeah.**  
14 Q. As opposed to like chemical composition?  
15 **A. Correct.**  
16 Q. Right. And why does it say presumptive identification?  
17 **A. As I indicated earlier in my testimony, based on**  
18 **education, training and experience, the microscopist is**  
19 **looking underneath and they are identifying what they**  
20 **believe they are seeing.**  
21 Q. All right. Then on the next page, page 5, it begins  
22 section 3, Sampling Discussion. Do you see that?  
23 **A. Yes.**  
24 Q. And this is a part -- this is something that you're  
25 writing now in the report, correct?

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1 **A. Yes, it is.**  
2 Q. Okay. The previous -- the table for Mr. Carlson, that  
3 was cut and pasted into your report, correct?  
4 **A. Yes. And I want to go back on record as indicating that**  
5 **I mentioned five minutes on our Air-O-Cells. Our**  
6 **Air-O-Cells were all run for two minutes in the walls,**  
7 **and they were run for five minutes in the attic.**  
8 Q. Any reason for running them different times in different  
9 places?  
10 **A. Open, wide open atmosphere as opposed to a confined**  
11 **space. What happens in these walls is when we run them**  
12 **for five, even if there's no insulation, you get the**  
13 **same results that Medina got when he recharged the CMU.**  
14 **It literally adds so much particle in there you can't**  
15 **see it. The microscopist can't read it.**  
16 Q. Okay. Because the particles are stacked on top of each  
17 other?  
18 **A. Overloaded, yeah.**  
19 Q. Right. You know, by the way, if we -- do you have any  
20 information that that attic had ever been cleaned in the  
21 history of the hotel?  
22 **A. I don't believe it had.**  
23 Q. All right.  
24 **A. I mean.**  
25 Q. Do you know how old the Rocky Waters Motor Inn was?

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1 **A. I don't think we looked at that in this case. The**  
2 **construction certainly looks, you know, circa 1970s.**  
3 Q. How about the Days Inn? Do you know how old that hotel  
4 is?  
5 **A. Probably similar. Yeah.**  
6 Q. So, if you just -- if you went into an attic space in a  
7 -- in an older building like that, you would expect to  
8 find a lot of dust in there, correct?  
9 **A. Yes.**  
10 Q. And, you know, if you just took a tape sample of just a  
11 dusty surface that hadn't been cleaned for -- I guess  
12 that'd be 40, 50 years, what -- what are all the things  
13 that you would expect to see in that sample?  
14 **A. Well, we did that as part of the case study that we**  
15 **worked on for about two years, Carlson and I, before we**  
16 **started utilizing this in the field. We -- we sampled**  
17 **-- I owned a house that was, at that point in time,**  
18 **140 years old, in St. Paul, Minnesota, a historic house.**  
19 **We did sampling there. They had actually had a fire in**  
20 **the house back in the '60s. So we sampled that house.**  
21 **We sampled other people that we knew. We sampled 1940s**  
22 **houses, 1970s houses, buildings of all kinds, things at**  
23 **the University of Minnesota where he works.**  
24 **What we were really looking at is the morphology.**  
25 **What we were finding in the older houses is that there**

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1 **was so much buildup of dust that you literally couldn't**  
2 **see. You couldn't pick out necessarily if there was**  
3 **pollutants that were related to industrial pollution,**  
4 **char, or soot. The -- that's why if you take a look at**  
5 **the samples that we took in the attic -- just a second.**  
6 **I'll look at something real quick. So just a minute.**  
7 **Yeah. That's why when you look at -- this is why it's**  
8 **-- when you look at 16 and you look at 18, okay, one is**  
9 **on a horizontal surface and one is on a vertical**  
10 **surface. So 18 we're actually taking a settled dust**  
11 **sample, and 16 we're taking it off of a framing member**  
12 **that is vertical, where settled dust cannot land onto,**  
13 **but where a charged soot from a complex fire would**  
14 **potentially bond, and we're getting effectively 5 to 10**  
15 **of char. So we think that the reason that that occurred**  
16 **on 18 is because that is indicative of new char. If**  
17 **that dust was 40 years old, I wouldn't be able to see**  
18 **that char in there. That's just our opinion.**  
19 Q. Okay.  
20 **A. Yeah.**  
21 Q. Well, what kinds of other things are in dust?  
22 **A. Well, based on looking under the microscope with Carlson**  
23 **and seeing a bigger breakdown of these kinds of things,**  
24 **you will see insect parts. You will see skin flakes.**  
25 **You will see pollen. You will see mold, mold obviously.**

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1 **Sometimes the mold has -- we call it sooty mold. It**  
2 **actually has char and/or soot on top of the mold. You**  
3 **will see -- potentially you'll be able to see sand or**  
4 **quartz, depending on the magnifying, in this level of**  
5 **sampling. That's about it. You're not going to get**  
6 **much more than that.**  
7 Q. Any inorganic material?  
8 **A. You might. You might be able to see some of that.**  
9 Q. Okay.  
10 **A. Yep.**  
11 Q. So back to your sampling discussion. First paragraph  
12 starts, typically, in post fire remediation strategies.  
13 Do you see that?  
14 **A. Yes.**  
15 Q. Okay. There's a comment in there that post remediation  
16 complaints from building occupants often include  
17 descriptions of a lingering smoke smell months and years  
18 later. Do you see that?  
19 **A. Yes.**  
20 Q. All right. That's -- that's something you say typically  
21 happens, correct?  
22 **A. Yes.**  
23 Q. All right. Do you know of specific complaints here?  
24 **A. I don't. For that to happen, you have to have the unit**  
25 **completely shut down usually for about 48 hours without**

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1 Q. Okay.  
2 **A. Then I would go into the wall and I would do a**  
3 **two-minute or a one-minute, depending on if it's**  
4 **insulated or not. In the ceiling above me, I probably**  
5 **would do a five minutes because -- unless there's**  
6 **insulation up there.**  
7 Q. And are the ambient air samples collected to establish  
8 sort of a baseline?  
9 **A. Yes. What's in the air at that point in time.**  
10 Q. Where were ambient air samples taken in this case?  
11 **A. Ambient air samples were taken -- just a second. In the**  
12 **attic. Just a minute. Look at the... Well, I would**  
13 **consider for -- anything that was done in the drop**  
14 **ceiling to be an ambient because of the large plenum**  
15 **that existed up there. It's a -- it's a large area.**  
16 **We ran them for two minutes because of the concern**  
17 **of overloading. We still got the results we got.**  
18 Q. Because it's a smaller space?  
19 **A. Well, no. It's a big space, but it's going to have**  
20 **potentially a lot more dust and things like you have up**  
21 **there because it's not wiped down. So we didn't want to**  
22 **overload it, and then the attic. So really those are --**  
23 **those are the ambients that we did. We did not do an**  
24 **outside sample.**  
25 Q. Okay. Then why did you not do an outside sample?

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1 **any conditioned air going into it, and then, when you**  
2 **open that door and you also have that change in**  
3 **humidity, is when that off-gassing will occur. So, if**  
4 **that condition hasn't happened at this facility, then**  
5 **you wouldn't smell it.**  
6 Q. Okay. In terms of that Asp/Pen, do you know if  
7 Mr. Carlson ever quantified the number of mold particles  
8 that he saw in some of the samples?  
9 **A. No. It doesn't look like he did in this case. I will**  
10 **tell you that his standard process with me over the**  
11 **years has been, if there is a concern from a mold**  
12 **standpoint, he always calls me and he says we got a**  
13 **problem, and then it shows up where he will actually do**  
14 **a count. Here, there was no indication of that.**  
15 Q. Okay. The fourth paragraph down it says, the ambient  
16 air samples are collected for a five-minute sample  
17 period to use for comparison purposes.  
18 **A. Yes.**  
19 Q. What does that mean?  
20 **A. Again, some of this is boilerplate. But typically that**  
21 **would mean that we would be sampling -- in this room I**  
22 **would set my sampling median and my pump probably here**  
23 **in the middle of this table. I'd run it five minutes,**  
24 **when it's open, open atmosphere. That's what you and I**  
25 **are breathing right now, at that moment.**

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1 **A. We considered the interior open spaces that we did to be**  
2 **representational of the outside, particularly attic.**  
3 **Whatever's happening outside is going to be happening in**  
4 **that attic based on how it's vented --**  
5 Q. Okay.  
6 **A. -- at that point in time.**  
7 Q. Did you do any ambient air samples in room spaces or  
8 lobby spaces?  
9 **A. No.**  
10 Q. Why not?  
11 **A. Those had all been wiped and cleaned.**  
12 Q. Okay.  
13 **A. We were really -- our assignment here was really to look**  
14 **at -- Travelers had already agreed to wipe the place**  
15 **down, and that had been -- that had been done. So we**  
16 **were really looking at the areas that were not affected**  
17 **by the wipe-down.**  
18 Q. Okay. Next in the report, Section 4, it says  
19 Description of Soot, correct?  
20 **A. Yes, it does.**  
21 Q. And where -- is that your language, or is that an  
22 excerpt from something else?  
23 **A. No. That's reprinted from -- go to page 7. There's the**  
24 **reference.**  
25 Q. Okay.



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1     **A. Yep.**  
2     Q. Report on Carcinogens, 12th Edition, correct?  
3     **A. Yes.**  
4     Q. And that's up to 14th Edition now?  
5     **A. Yep.**  
6     Q. All right. It says, soot is a general term that refers  
7         to the black, impure carbon particles resulting from the  
8         incomplete combustion of a hydrocarbon, correct?  
9     **A. It is.**  
10    Q. And then it says, it is more properly restricted to the  
11       product of the gas-phase combustion process but is  
12       commonly extended to include the residual pyrolyzed fuel  
13       particles such as cenospheres, charred wood, petroleum  
14       coke, etcetera, that may become airborne during  
15       pyrolysis and which are more properly identified as  
16       cokes or chars.  
17       Can you put that in laymen's terms for me?  
18    **A. Yeah. Char is a problem. Cokes -- char is a problem**  
19    **and soot is a problem. And what I think this -- this is**  
20    **a -- I don't think this is the complete reprint. So you**  
21    **may want to check on there, but I do believe there's**  
22    **another paragraph that goes with it that indicates**  
23    **there's -- that they talk about the size of the**  
24    **particles. And they -- and the concerning part is**  
25    **things that are 10 microns in size or less, because that**

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1     **-- your lungs are a natural HEPA filter. That's why**  
2     **we're all alive and not dead. Okay. So they -- they**  
3     **filter out particulate that is bigger than -- bigger**  
4     **than that size. So we are -- that median that we're**  
5     **sampling with, that Air-O-Cell cassette is designed to**  
6     **sample material that is 10 microns or less in size.**  
7     **That's what we're looking for, the stuff you can't see,**  
8     **because it will enter into your lungs. And that's what**  
9     **-- that's what Carlson is also looking for when he's**  
10    **looking under the microscope at the tape lifts.**  
11    Q. What is the gas-phase combustion process?  
12    **A. Burning. It's called the burning process. That's where**  
13    **you're going to see -- that's the smoke that's coming**  
14    **out.**  
15    Q. The wildfire debris that's there now, is that in the  
16       gas-phase combustion process?  
17    **A. No.**  
18    Q. Okay.  
19    **A. It would still be burning if it was in the gas-phase**  
20    **combustion process.**  
21    Q. That's what I assumed. Okay.  
22       It talks about polycyclic aromatic hydrocarbons.  
23       What are those?  
24    **A. PAHs.**  
25    Q. If you know.

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1     **A. Yeah. It's better for the hygienist to answer that**  
2     **question.**  
3     Q. Okay. Do you know if there are PAHs in non-gas-phase  
4       soots?  
5     **A. Based on the literature I read, yes.**  
6     Q. Okay. Can you point me to any specific literature?  
7     **A. No. I referenced a whole bunch before, but, again,**  
8     **without having those in front of me, no.**  
9     Q. Fair enough.  
10    **A. No.**  
11    Q. Okay. Then we go to your conclusions. Well, actually,  
12       let me ask you this. There was a -- in some of the  
13       materials that I received last night there was a  
14       publication titled, Report on Carcinogens, 14th Edition.  
15    **A. Mm-hmm.**  
16    Q. Correct?  
17    **A. Yes.**  
18    Q. What is that publication?  
19    **A. Well, that's one of the referenced documents that we**  
20    **utilize. And...**  
21    Q. Is that put out by the National Institutes of Health?  
22    **A. Yes.**  
23    Q. All right. Just ask you about some of the statements in  
24       there. If -- if you don't know, I can ask Mr. --  
25       Mr. Carlson. But there's a statement in there that says

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1     soots are classified into four morphologically distinct  
2     forms. One, acini form carbon; two, carbonaceous  
3     xerogel particles; three, carbon cenospheres; and, four,  
4     coke and char fragments.  
5     **A. Yes.**  
6     Q. Do you know what forms of soot we're dealing with in  
7       this case, or what forms of soot Mr. Carlson observed?  
8     **A. You'll have to ask him that.**  
9     Q. Fair enough.  
10    **A. If I had his photos in front of me, I might be able to**  
11    **identify under the microscope, based on having looked at**  
12    **these so many times, but, again, that's a better**  
13    **question for him.**  
14    Q. Okay.  
15    **A. Yeah. He identified them.**  
16    Q. Do you agree with the statement that soots are black  
17       particulate matter formed as byproducts of combustion or  
18       pyrolysis of organic materials such as coal, wood, fuel  
19       oil, waste oil, paper or plastics and household refuse?  
20    **A. At the time of the 12th Edition, 2011, I would agree**  
21    **with that. I don't know what edition you're reading or**  
22    **if they have updated that. Based -- as I said earlier,**  
23    **based on some of the new literature that's being**  
24    **published, soot is now also being put into a white**  
25    **and/or a gray form as well. So the idea that soot is**



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1     **only black is now changing and evolving.**  
2     Q. Okay.  
3     **A. Yeah.**  
4     Q. So, other than the description of soot as black  
5         particulate matter, do you agree with the statement I  
6         just read?  
7     **A. Yes.**  
8     Q. Okay. Do you agree with the statement that the chemical  
9         compositions of soot -- and I'm sorry. Let me strike  
10         that.  
11         Do you agree with the statement that their chemical  
12         compositions and properties are highly variable and  
13         depend on the type of starting material and the  
14         combustion conditions?  
15     **A. Absolutely.**  
16     Q. Okay. Do you agree with the statement that particulate  
17         emissions from fireplaces consist largely of aciniform  
18         carbon?  
19     **A. Absolutely.**  
20     Q. Do you agree with the statement, the general population  
21         potentially is exposed to soots from fireplaces,  
22         furnaces, engine exhaust and particulate emissions from  
23         any combustion source?  
24     **A. Yes.**  
25     Q. Do you agree with the statement that chimney sweeps

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1     other material on the tape?  
2     **A. No, not in this level.**  
3     Q. These are just raw particle counts, correct?  
4     **A. Yes.**  
5     Q. Regardless of whether there's, you know, one mold spore  
6         also on the tape or 500 mold spores also on the tape,  
7         correct?  
8     **A. Correct. And you could -- so, for example, on the**  
9         **photos that he has published, even today he could look**  
10         **at one of those photos, and in front of you he could**  
11         **quantify, based on that photo, what, as a hygienist, he**  
12         **is seeing. And he could tell you, yeah, here's a mold**  
13         **spore. This is -- this is -- here's a skin flake.**  
14         **Here's a -- you know, he could certainly do that, and**  
15         **those are -- those show up on the photos.**  
16     Q. Okay.  
17     **A. Yeah.**  
18     Q. I do have his reports here with photos, but  
19         unfortunately I just have them with black and white.  
20         Would those be of any use to you --  
21     **A. Sure. Absolutely.**  
22     Q. -- to look at in black and white?  
23     **A. You bet.**  
24     Q. Okay. Well, let me ask you this. Is there anything  
25         that I've asked you today that you have not been able to

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1     likely have the highest occupational exposure to soots?  
2     **A. Yeah. It's based on the study done in the 1800s, and**  
3         **that has been -- I think it's one of the things we**  
4         **reference in our -- in our larger reports, but, yes.**  
5     Q. Do you agree with that statement?  
6     **A. The chimney sweep study, yes.**  
7     Q. There's also a reference to grape cluster patterns in  
8         some of these reports.  
9     **A. Yeah. I mentioned that to you before.**  
10     Q. And what do you mean by grape cluster patterns?  
11     **A. If you look at Carlson's photos that he has produced,**  
12         **that's one the things we look at for a complex fire**  
13         **burn, where we've got -- we would not see a grape**  
14         **cluster of carbon aciniforms from a fireplace.**  
15     Q. Okay.  
16     **A. They don't cluster together like that.**  
17     Q. Let's talk about some of the other things in ordinary  
18         dust. Do dead insects pose a health risk to humans?  
19     **A. I can't answer that question.**  
20     Q. Do you know if dead skin or decomposing skin poses a  
21         health risk to humans?  
22     **A. I don't typically see it on a menu, but I don't know.**  
23     Q. So, if we're looking at Mr. Carlson's testing here, I  
24         just want to make sure I understand. Does he ever  
25         characterize the proportion of char and soot to all

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1     answer that you would want to look at the photographs to  
2     answer?  
3     **A. No.**  
4         MR. DEVILLING: Okay. Off the record.  
5         (Discussion held off the steno record.)  
6         MR. DEVILLING: Back on the record.  
7     Q. (MR. DEVILLING) Do you consider yourself a scientist?  
8         MR. SCOTT: Object to the form.  
9     **A. You know, I'll answer the question this way. In all of**  
10         **the voir dres that I have gone through in my career, in**  
11         **all of the challenges that one sees as an expert, I have**  
12         **never had methodology come up as a challenge, or, if it**  
13         **has, it has been -- it has been disallowed by the Court.**  
14         **In other words, the courts have allowed me to testify**  
15         **based on my methodology. So I certainly understand the**  
16         **scientific principle.**  
17         **One of the things that the master's in engineering**  
18         **class dealt with was the design of experiments**  
19         **specifically. So we spent a full semester on how to**  
20         **physically look at a problem step by step by step and**  
21         **design the theory and the experiment for the problem and**  
22         **how to solve that problem. So I understand the**  
23         **scientific method based on my education, training and**  
24         **experience. My wife certainly thinks I'm a scientist,**  
25         **mad scientist.**

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1 Q. (MR. DEVILLING) Do you have formal training as a  
2 scientist?  
3 **A. No.**  
4 MR. SCOTT: Object to the form.  
5 MR. DEVILLING: Let's take a five-minute  
6 break.  
7 THE VIDEOGRAPHER: We are going off the  
8 record, and the time is 11:39 a.m.  
9 (Break taken at 11:39 a.m. - 11:45 a.m.)  
10 THE VIDEOGRAPHER: We are back on the  
11 record, and the time is 11:45 a.m.  
12 Q. (MR. DEVILLING) Okay. Mr. Irmiter, I want to talk a  
13 little bit about some more conclusions here in  
14 Exhibit 2. It says based on the results of the  
15 sampling. Do you see that paragraph?  
16 **A. Which page please?**  
17 Q. Page 6.  
18 **A. Yes.**  
19 Q. And it says, based on the results of the sampling, and  
20 then you go on to issue some recommendations?  
21 **A. Yes.**  
22 Q. All right. And what was your understanding of how  
23 Mr. Howarth was going to use your report?  
24 **A. My understanding is that this was an appraisal when we**  
25 **were retained. I was going to be going to an appraisal**

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1 **A. I don't think I've seen his estimate.**  
2 Q. Okay.  
3 **A. I certainly could do that, but I haven't seen it.**  
4 Q. Back to your CV. In any of the training or testing or  
5 any of the licenses or certifications listed, was there  
6 anything specific to wildfires?  
7 **A. Not specific to wild -- well, just a second. I want to**  
8 **take a look at something here. Just a minute. No, not**  
9 **specific to wildfires. More specific to, you know,**  
10 **design of buildings, open atmosphere, air movement in**  
11 **buildings, and certainly how to sample, how to gather**  
12 **samples.**  
13 Q. Okay.  
14 **A. Yeah.**  
15 Q. Have you ever attempted to become a certified industrial  
16 hygienist?  
17 **A. No.**  
18 Q. Have you ever failed any licensing exams?  
19 **A. No.**  
20 Q. Do you know what the term aciniform means?  
21 **A. Yeah.**  
22 Q. I've used it a couple times in questions. What does  
23 that term mean?  
24 **A. It's a -- it's one of the -- it's the type of**  
25 **particulate that is distributed with a burn from the**

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1 **potentially. I don't know if it had been named yet or**  
2 **not. My understanding is, is that we would issue --**  
3 **depending on our results, I would issue recommendations,**  
4 **and then those recommendations would be taken by one of**  
5 **his staff or him, and they would put together an**  
6 **Xactimate estimate.**  
7 Q. Okay.  
8 **A. Based on that. Now, we do Xactimate estimates for every**  
9 **one of our clients. We now do them for Mr. Howarth. We**  
10 **didn't at this point in time. So...**  
11 Q. Okay. That was my next question.  
12 **A. Yeah.**  
13 Q. You've never done an Xactimate estimate yourself in this  
14 case, correct?  
15 **A. You know, as I sit here today, not that I'm aware of.**  
16 Q. Okay.  
17 **A. And if it's not in the documents we sent you, then it**  
18 **doesn't exist.**  
19 Q. It was -- it was not. So...  
20 **A. Okay.**  
21 Q. Okay.  
22 **A. Yeah, it just -- yeah, we did not.**  
23 Q. All right. Have you ever -- have you ever done a  
24 comparison of your recommendations to what Mr. Howarth  
25 ultimately estimated?

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1 **fire. Typically it's going to be a carbon. It's going**  
2 **to -- if we tested the aciniform itself, so on that --**  
3 **on that particular sample, if -- if a lab doing Level 4**  
4 **were to pinpoint that particular aciniform under the**  
5 **microscope and then break it down chemically, we would**  
6 **expect the highest distribution of the element to be**  
7 **carbon.**  
8 MR. DEVILLING: I'm just looking back  
9 through my notes here, Clint.  
10 MR. SCOTT: Okay.  
11 Q. (MR. DEVILLING) Did you ever make any determination of  
12 how often the fireplaces were used at either of these  
13 hotels?  
14 **A. No.**  
15 Q. Did you ever make a determination of how often outdoor  
16 fire pits would have been used at the hotels?  
17 **A. No.**  
18 Q. Do you have any pre-loss baseline testing from either of  
19 these hotels?  
20 **A. No.**  
21 Q. Okay. From anywhere in Gatlinburg?  
22 **A. No.**  
23 Q. And what -- what would pre-loss baseline testing -- what  
24 does that mean to you?  
25 **A. Like anything, we would certainly like to have as much**

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1 information as we can about a facility or a building  
2 prior to any inspection we do. We're not there at the  
3 time of the loss. So that information is always  
4 helpful.  
5 Q. My --  
6 **A. It's part -- it's part of a general experiment that I**  
7 **talked about earlier, you know.**  
8 Q. My apologies if I asked this earlier. But do you know  
9 how close the fire got to the hotels?  
10 **A. I believe it -- I believe there was some burn right**  
11 **across the creek, if I remember right.**  
12 Q. Okay.  
13 **A. Yeah.**  
14 Q. Do you know anything about the soil composition in the  
15 vicinity of the hotels?  
16 **A. Do not.**  
17 Q. Do you know anything about the predominant forms of  
18 plant life in the area that burned?  
19 **A. No.**  
20 Q. You make a comment in your report that soot is still  
21 viable in the ambient air. What do you mean by viable?  
22 **A. It's still there.**  
23 Q. Any idea how many times the air in the attic of the  
24 hotel has turned over since the fire?  
25 **A. No.**

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1 Q. Same question as to the walls.  
2 **A. No.**  
3 Q. Tell me a little bit about Mr. Piero's training and  
4 background --  
5 **A. Sure.**  
6 Q. -- that would qualify him to collect samples on a --  
7 **A. Sure.**  
8 Q. -- case like this.  
9 **A. His degree is in environmental science from the**  
10 **University of Colorado. Specific to that degree he has**  
11 **classes where they designed and learned how to do**  
12 **sampling protocols, believe it or not, for wildfires**  
13 **because of Colorado, for mold and other particulates.**  
14 **He also has classes in microscopy, to look underneath**  
15 **the microscopes. Understands the whole process of chain**  
16 **of custody and sampling locations. So he -- he and my**  
17 **son Jim both graduated from the same program, and they**  
18 **do the majority of our site -- our sampling in the**  
19 **field.**  
20 Q. Do you know why some of Mr. Carlson's data is stated in  
21 a range as a particular -- as opposed to a specific  
22 number of particle counts?  
23 **A. You'll have to ask him that.**  
24 Q. Okay. Do you believe that the health of the guests at  
25 the Days Inn and Rocky Waters Motor Inn is at risk as a

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1 result of staying at the hotels?  
2 **A. I'm not qualified to give that opinion.**  
3 Q. Okay.  
4 **A. I typically don't disqualify myself, but I'm not a**  
5 **medical doctor.**  
6 Q. Fair enough. I do want to look at Exhibit 3 and just go  
7 through that briefly. Let me just ask you, were there  
8 any differences in your methodology of testing on the  
9 Days Inn as opposed to the Rocky Waters Motor Inn?  
10 **A. No.**  
11 Q. The -- in the Days Inn it appears to me that of all the  
12 samples taken there were four that showed either more  
13 soot than char or the same level of char and soot.  
14 Whereas, in the Rocky Waters Motor Inn, there are only  
15 four with more soot than char or with the same level of  
16 char and soot. Do you have any explanation for that  
17 difference?  
18 **A. The only thing I can think of is it sits higher. I**  
19 **don't know if you've been to the site or not. But they**  
20 **sit -- this one sits at a higher elevation.**  
21 Q. Which one? The Days Inn?  
22 **A. Days Inn, yeah.**  
23 Q. Okay.  
24 **A. Yeah. So -- so it is acclimated differently. So in**  
25 **terms of -- in terms of the exposure of that building,**

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1 **based on the building code, it would be an exposure more**  
2 **closer to an Exposure C because of the escarpment, which**  
3 **is the hill that it's next to. So the wind load would**  
4 **be higher on any given day than the one that sits lower**  
5 **and is more protected.**  
6 Q. Did you ever do any analysis of average wind speed in  
7 the valley?  
8 **A. No.**  
9 Q. Let me just clarify that question. Did you ever do an  
10 analysis of average wind speeds in Gatlinburg?  
11 **A. No.**  
12 Q. In terms of your sampling discussion, in Days Inn, it  
13 looks like there were 20 interior samples taken over all  
14 at the Days Inn, correct?  
15 **A. Yes.**  
16 Q. Why did you not take more samples?  
17 **A. That was deemed enough based on the size of the**  
18 **building, yeah.**  
19 Q. Is there any standard that you employ for the number of  
20 samples that you want to obtain for certain square  
21 footage or cubic footage of a building?  
22 **A. There can be, certainly. Economics can also play into**  
23 **it. I don't think it did here in this case, but...**  
24 Q. Do you recall whether Mr. Howarth gave you a limited  
25 budget to do the testing?

Page 126		Page 128	
1	<b>A. He doesn't give us a budget. None of our clients do.</b>	1	ERRATA SHEET
2	<b>They send us a file. We review it, and then we send out</b>	2	Page/Ln Correction Reason
3	<b>to them what we believe is necessary, with some options</b>	3	
4	<b>to -- once we get to the field, to possibly do what's</b>	4	
5	<b>called a change order, where we need to add some scope</b>	5	
6	<b>based on what we're seeing if something changes. Not</b>	6	
7	<b>everybody agrees to that. Some people say I don't want</b>	7	
8	<b>to pay that, and they go -- they go elsewhere.</b>	8	
9	Q. Okay. Were there any differences as to your	9	
10	recommendations for remediation between the Days Inn and	10	
11	Rocky Waters Motor Inn?	11	
12	<b>A. No. They were very similar.</b>	12	
13	Q. Okay. Do you believe that all -- all of the wall	13	
14	cavities at both of these hotels contain wildfire	14	
15	debris?	15	
16	MR. SCOTT: Object to the form.	16	
17	<b>A. To a limited degree, yes.</b>	17	
18	Q. (MR. DEVILLING) Okay. Whether a particular wall cavity	18	
19	would have wildfire debris in it would depend on the	19	
20	extent to which it's sealed from the air around the	20	
21	cavity, correct?	21	
22	<b>A. Yes.</b>	22	
23	Q. Okay. And without doing some very destructive testing,	23	
24	there would be no way to determine the degree to which	24	
25	each wall cavity is isolated from the surrounding	25	
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1	environment, correct?	1	I, Thomas J. Irmiter, have read this transcript, pages 1
2	<b>A. Correct.</b>	2	- 127, and acknowledge herein its accuracy except as
3	MR. DEVILLING: Okay. Those are all the	3	noted on the errata sheet.
4	questions that I have.	4	
5	MR. SCOTT: No questions. Thank you.	5	
6	MR. DEVILLING: Thank you.	6	
7	THE VIDEOGRAPHER: And we are going off the	7	Signature
8	record, and the time is 12:02 p.m.	8	
9	(Whereupon, the deposition concludes at 12:02	9	
10	p.m.)	10	
11		11	Notary Public
12		12	
13		13	
14		14	
15		15	
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25		25	

1 STATE OF MINNESOTA  
2 CERTIFICATE  
3 COUNTY OF CARVER

4 I, Christine M. Clark, RPR, hereby certify  
5 that I reported the Videotape Deposition of Thomas J.  
6 Irmiter on this 28th day of February, 2020, in  
7 Minneapolis, Minnesota, and that the witness was by me  
8 first duly sworn to tell the truth and nothing but the  
9 truth concerning the matter in controversy aforesaid;

10 That I was then and there a notary public in and  
11 for the County of Carver, State of Minnesota; that by  
12 virtue thereof I was duly authorized to  
13 administer an oath;

14 That the foregoing transcript is a true and  
15 correct transcript of my stenographic notes in  
16 said matter, transcribed under my direction and  
17 control;

18 That the cost of the original has been  
19 charged to the party who noticed the deposition and  
20 that all parties who ordered copies have been  
21 charged at the same rate for such copies;

22 That the reading and signing of the  
23 deposition was not waived;

24 That I am not related to any of the  
25 parties hereto, nor interested in the outcome of the  
action and have no contract with any parties,  
attorneys or persons with an interest in the action  
that has a substantial tendency to affect my  
impartiality;

WITNESS MY HAND AND SEAL this 3rd day of  
March 2020.

21  
22

23 -----  
Christine M. Clark, RPR  
Notary Public

24  
25

**Videotape Deposition of Thomas J. Irmiter - 2/28/2020**  
**Rocky Waters Mountain Inn, LLC v. The Travelers Indemnity Company of America**

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